

(c) In the event that a state Medicaid plan amendment authorizing payments to significant disproportionate share hospitals is disapproved by the federal government or that federal funds are otherwise not available for significant disproportionate share payments to hospitals, this Act shall have no effect.

**SECTION 9. APPROPRIATION.** (a) All money credited to the access to health care account created by Subsection (a) of Section 3 of this Act during the fiscal biennium ending August 31, 1993, is appropriated to the Texas Department of Human Services for that fiscal biennium to provide for indigent care with programs for significant disproportionate share programs.

(b) All money credited to the medical services enhancement account created by Subsection (b) of Section 3 of this Act during the fiscal biennium ending August 31, 1993, is appropriated to the Texas Department of Human Services to be used only for making payments through the Medicaid disproportionate share program to rural hospitals that provide a disproportionate amount of uncompensated care to low-income and uninsured patients.

**SECTION 10. REPORTING REQUIREMENTS.** (a) Hospitals receiving funds under Subsection (a) of Section 9 of this Act must periodically report to the department, the governor, and the Legislative Budget Board the following information, as defined by department rules:

- (1) uses of the funds;
- (2) the hospital's policy on eligibility for services and the type of service provided to patients without health care coverage or means to pay for care;
- (3) improvements in levels of services to the community;
- (4) the impact of these funds on the hospital's financial status, including levels of uncompensated care and local tax support; and
- (5) any other pertinent information as defined by the department.

(b) The department shall submit to the 73rd Legislature not later than January 15, 1993, a report containing information regarding the status of:

- (1) indigent access to health care;
- (2) the operation of disproportionate share programs; and
- (3) local funding of indigent health care services.

**SECTION 11. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on July 28, 1991: Yeas 30, Nays 0; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas; passed the House on July 30, 1991: Yeas 141, Nays 0; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved July 30, 1991.

Effective July 30, 1991.

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## CHAPTER 3

### S.B. No. 2

#### AN ACT

relating to the oversight and regulation of the state's environmental resources, natural resources, and energy resources; providing for the issuance of bonds by mitigation project participants; creating offenses and providing civil and criminal penalties.

*Be it enacted by the Legislature of the State of Texas:*

**ARTICLE 1. CONSOLIDATION, POWERS, AND DUTIES OF  
ENVIRONMENTAL STATE AGENCIES**

**SECTION 1.001.** Section 5.001, Water Code, is amended to read as follows:

**Sec. 5.001. DEFINITIONS.** In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.
- (3) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

**SECTION 1.002.** The heading to Subchapter B, Chapter 5, Water Code, is amended to read as follows:

**SUBCHAPTER B. ORGANIZATION OF THE TEXAS *NATURAL RESOURCE  
CONSERVATION* [~~WATER~~] COMMISSION**

**SECTION 1.003.** Section 5.011, Water Code, is amended to read as follows:

**Sec. 5.011. PURPOSE OF CHAPTER.** It is the purpose of this chapter to provide an organizational structure for the commission that will provide more efficient and effective administration of *the conservation of natural resources and the protection of the environment* [~~water~~] in this state and to define the duties, responsibilities, authority, and functions of the commission and the executive director.

**SECTION 1.004.** Section 5.012, Water Code, is amended to read as follows:

**Sec. 5.012. DECLARATION OF POLICY.** The commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to *the conservation of natural resources and the protection of the environment* [~~water~~].

**SECTION 1.005.** Section 5.013(a), Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

- (1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;
- (2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;
- (3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;
- (4) the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification;
- (5) the determination of the feasibility of certain federal projects;
- (6) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;
- (7) conduct of the state's [~~coastal oil and~~] hazardous spill prevention and control program;
- (8) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;
- (9) the administration of a portion of the state's injection well program;
- (10) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;
- (11) the state's responsibilities relating to regional waste disposal;
- (12) the responsibilities assigned to the commission by *Chapters 361, 363, 382, 401, and 402, Health and Safety Code* [~~the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)~~];

- (13) the administration of the national flood insurance program;
- (14) administration of the state's water rate program under Chapter 13 of this code; and
- (15) any other areas assigned to the commission by this code and other laws of this state.

SECTION 1.006. Section 5.014, Water Code, is amended to read as follows:

Sec. 5.014. APPLICATION OF SUNSET ACT. The Texas *Natural Resource Conservation* [Water] Commission is subject to ~~[the Texas Sunset Act—]~~Chapter 325, Government Code (*Texas Sunset Act*). Unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 2005 [1997].

SECTION 1.007. The heading to Subchapter C, Chapter 5, Water Code, is amended to read as follows:

SUBCHAPTER C. TEXAS *NATURAL RESOURCE CONSERVATION*  
[WATER] COMMISSION

SECTION 1.008. Section 5.051, Water Code, is amended to read as follows:

Sec. 5.051. COMMISSION. The Texas *Natural Resource Conservation* [Water] Commission is created as an agency of the state.

SECTION 1.009. Section 5.109(b), Water Code, is amended to read as follows:

(b) The chief clerk shall assist the commission in carrying out its duties under this code and other law.

SECTION 1.010. Section 5.115(a), Water Code, is amended to read as follows:

(a) At the time an application for a permit or license *under this code* is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license.

SECTION 1.011. Section 5.117(a), Water Code, is amended to read as follows:

(a) The executive director shall monitor compliance with all permits and licenses issued by the commission *under this code*, and if the evidence available to the executive director through this monitoring process indicates that a permittee or licensee is in substantial noncompliance with his permit or license for a period of four months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance.

SECTION 1.012. Section 5.119, Water Code, is amended to read as follows:

Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the watercourses and *natural resources* of the state and of the needs of the state concerning the use, storage, and conservation of water and the use and conservation of other *natural resources* and of the need to maintain the quality of the environment [water] in the state.

SECTION 1.013. Section 5.120, Water Code, is amended to read as follows:

Sec. 5.120. CONSERVATION AND QUALITY OF ENVIRONMENT [WATER]. The commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state [water].

SECTION 1.014. Section 5.172, Water Code, is amended to read as follows:

Sec. 5.172. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for *environmental* [water] pollution or *environmental* [water] quality control and that receives a legislative appropriation for these purposes may transfer to the commission any amount mutually agreed on by the commission and the agency, subject to the approval of the governor.

SECTION 1.015. The heading to Section 5.175, Water Code (effective until delegation of NPDES permit authority to the Texas Natural Resource Conservation Commission), is amended to read as follows:

Sec. 5.175. ~~[DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR] INSPECTION OF WATER POLLUTION RECORDS.~~

SECTION 1.016. The heading to Section 5.175, Water Code (effective on delegation of NPDES permit authority to the Texas Natural Resource Conservation Commission), is amended to read as follows:

Sec. 5.175. ~~[DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR] INSPECTION OF WATER POLLUTION RECORDS.~~

SECTION 1.017. Section 5.179, Water Code, is amended to read as follows:

Sec. 5.179. SEAL. The commission shall have a seal bearing the words Texas Natural Resource Conservation [Water] Commission encircling the oak and olive branches common to other official seals.

SECTION 1.0171. Effective September 1, 1993, Section 5.222, Water Code, is amended to read as follows:

Sec. 5.222. DEPUTY DIRECTORS; TRANSITIONAL ORGANIZATION. (a) The commission has four deputy directors directly reporting to the executive director.

(b) The deputy director for air quality shall be responsible for the management and supervision of all responsibilities of the commission under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and Chapter 382, Health and Safety Code, including monitoring, permitting, policy research, planning, small business assistance, mobile sources, enforcement functions, and other duties assigned by the executive director that are not assigned by this section to other deputy directors. The deputy director for air quality must have at least two years' experience in air pollution control program management for the Texas Air Control Board or the commission.

(c) The deputy director for water shall be responsible for the management and supervision of all water programs, including water quality, water rights and uses, water utilities, petroleum storage tank programs, water well drilling, the setting of standards for drinking water, protection of public water supplies and bodies of water, the regulation of on-site sewage disposal systems, the administration of on-site wastewater treatment research, wastewater treatment systems, and other duties assigned by the executive director that are not assigned by this section to other deputy directors.

(d) The deputy director for waste management shall be responsible for all regulatory duties assigned to the commission concerning the management, supervision, disposal, and cleanup of all hazardous wastes and solid wastes, the disposal of radioactive substances, and other duties assigned by the executive director that are not assigned by this section to other deputy directors.

(e) The deputy director for administration shall be responsible for the management and supervision of accounting, budgeting, personnel, data processing systems with nonregulatory purposes, general and staff services, and other duties assigned by the executive director that are not assigned by this section to other deputy directors.

(f) This section does not prohibit the commission or the executive director from establishing a direct line of reporting from persons providing or overseeing staff support functions for the commission or the executive director, including hearings, general legal consultation, research, or public information. The salaries paid to the deputy directors described by Subsections (b) through (e) of this section may not be lower than those of any other position established within the commission, other than the executive director.

(g) This section expires September 1, 1997 ~~[executive director may employ any deputy directors that he determines appropriate.~~

~~[(b) The deputy directors are under the direction and supervision of the executive director.~~

~~[(c) The powers and duties of the deputy directors shall be those powers and duties required by the commission and the executive director].~~

SECTION 1.018. Section 5.228, Water Code, is amended to read as follows:

Sec. 5.228. APPEARANCES AT HEARINGS. The position of and information developed by the commission shall be presented by the executive director or his designated representative at hearings of the commission and the hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's *environment and natural [water]* resources, including matters that have been determined to be policies of the state. The executive director shall be named a party in hearings before the commission.

SECTION 1.019. Section 5.233, Water Code, is amended to read as follows:

Sec. 5.233. GIFTS AND GRANTS. The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code *and other law*.

SECTION 1.020. Section 5.234(a), Water Code, is amended to read as follows:

(a) An application, petition, or other document requiring action of the commission shall be presented to the executive director and handled as provided by this code *or other law* and in the rules adopted by the commission.

SECTION 1.021. Section 5.235(b), Water Code, as amended by H.B. No. 1986, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) Except as specifically provided by this section, the fee for filing an application or petition is \$100 plus the cost of any required notice. The fee for a by-pass permit shall be set by the *commission [agency]* at a reasonable amount to recover costs, but not less than \$100.

SECTION 1.022. Subchapter H, Chapter 5, Water Code, is amended by adding Section 5.314 to read as follows:

*Sec. 5.314. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS. (a) Except as provided in Subsection (b), all permit decisions shall be made within 180 days of the receipt of the permit application or application amendment or the determination of administrative completeness, whichever is later.*

*(b) This section does not apply to permits issued under federally delegated or approved programs unless allowed under that program.*

SECTION 1.023. Section 341.035(a), Health and Safety Code, is amended to read as follows:

(a) A person contemplating establishing a drinking water supply system for public use must submit completed plans and specifications to the department before construction of the system. The department shall approve plans that conform to the state's water safety laws. The water supply system may be established only on the department's approval. ~~[To avoid duplication of review by state agencies, the department's approval is not required for a public drinking water supply system if plans and specifications are required by law to be approved by the Texas Water Commission.]~~

SECTION 1.024. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.040 to read as follows:

*Sec. 341.040. DEFINITIONS. In this subchapter:*

*(1) "Board" means the Texas Natural Resource Conservation Commission.*

*(2) "Department" means the Texas Natural Resource Conservation Commission.*

SECTION 1.025. Section 361.003, Health and Safety Code, as amended by S.B. No. 1099 and H.B. No. 1763, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board ~~[of health]~~" means the Texas *Natural Resource Conservation Commission* ~~[Board of Health]~~.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(4) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(5) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(6) "Commission" means the Texas *Natural Resource Conservation* ~~[Water]~~ Commission.

(7) "Commissioner" means the *executive director of the Texas Natural Resource Conservation Commission* ~~[commissioner of health]~~.

(8) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(9) "Department" means the Texas *Natural Resource Conservation Commission* ~~[Department of Health]~~.

(10) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(11) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(12) "Executive director" means the executive director of the commission.

(13) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(14) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but (B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(15) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(16) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(17) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(18) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(19) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(20) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(21) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(22) [(18)] "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(23) [(22)] "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes

garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(24) [(23)] "Notice of intent to file an application" means the notice filed under Section 361.063.

(25) [(24)] "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(26) [(25)] "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(27) [(26)] "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(28) [(27)] "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(29) [(28)] "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

(30) [(29)] "Recycling" means the legitimate use, reuse, or reclamation of solid waste.

(31) [(30)] "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(32) [(31)] "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:



(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(33) [(32)] "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(34) [(33)] "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(35) [(34)] "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(36) [(35)] "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(37) [(36)] This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. *Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid ["Solid] waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industri-*

al, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(38) [(37)] This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. *Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste"* means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(39) [(38)] "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(40) [(39)] "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

(41) [(40)] "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 1.026. Section 361.472(a), Health and Safety Code, as added by S.B. No. 1340, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee of \$2 for each new *automobile, van, bus, truck, trailer, semitrailer, truck tractor and semitrailer combination, or recreational vehicle tire* ~~[of the following types]~~ *sold that has a rim diameter equal to or greater than 12 inches but less than 26 inches*;

~~[(1) an automobile tire with a rim diameter of 15 inches or less;~~

~~[(2) a light truck tire with a rim diameter of not less than 16 inches or more than 19 inches; and~~

~~[(3) a truck tire with a rim diameter of 20 inches or more].~~

SECTION 1.0261. Section 23, S.B. No. 1340, Acts of the 72nd Legislature, Regular Session, 1991, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules required to administer Subchapter P, Chapter 361, Health and Safety Code, as added by this Act. Section 361.430, Health and Safety Code, applies only to newsprint purchased on or after January 1, 1992. The fees imposed by Section 361.472, Health and Safety Code, as added by this Act, apply only to a new tire sold on or after January 1, 1992. The payments authorized by Section 361.477, Health and Safety Code, as added by this Act, apply only to tires *collected and* shredded on or after April 1, 1992. The change in law made to Subsection (f), Section 361.112, Health and Safety Code, by this Act, applies only to a person who temporarily stores scrap tires on or after April 1, 1992.

*(h) The prohibition on charging a tire collection fee under Section 361.480, Health and Safety Code, as added by this Act, applies only to tires collected on or after April 1, 1992.*

SECTION 1.0262. Section 361.477, Health and Safety Code, as added by S.B. No. 1340, Acts of the 72nd Legislature, Regular Session, 1991, is amended to conform to H.B. No. 847, Acts of the 72nd Legislature, Regular Session, 1991, by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) A waste tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the department in accordance with forms prescribed by the department;

(2) demonstrate as required by rules adopted under this section that:

(A) all tires for which payment is sought have been shredded to a particle size not larger than nine square inches; and

(B) not less than 25 percent of those tires were collected from tire dumps listed on the department's priority enforcement list; ~~[and]~~

(3) provide any other information the department determines is needed to accomplish the purposes of this subchapter; *and*

*(4) demonstrate that energy recovery activities are in compliance with applicable air emission control rules and standards as adopted by the Texas Air Control Board.*

*(e) A permitted Type VIII tire monofill approved under board of health rules may qualify as a waste tire processor and is eligible to receive payment under this section if the Type VIII tire monofill complies with all the provisions of this subchapter and rules of the board of health.*

SECTION 1.027. Subchapter N, Chapter 361, Health and Safety Code, as added by H.B. No. 847, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 1.028. (a) Subchapter N, Chapter 361, Health and Safety Code, as added by S.B. No. 1099, Acts of the 72nd Legislature, Regular Session, 1991, is relettered as Subchapter Q, Health and Safety Code, and Sections 361.431–361.440, Health and Safety Code, as added by that Act are renumbered as Sections 361.501–361.510, Health and Safety Code, and appropriate cross-references are changed.

(b) Subchapter N, Chapter 361, Health and Safety Code, as added by S.B. No. 830, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 1.029. Section 361.431(2), Health and Safety Code, as added by S.B. No. 1099, Acts of the 72nd Legislature, Regular Session, 1991 (renumbered as Section 361.501(2) by this Act), is repealed.

SECTION 1.030. Section 1.25, S.B. No. 1099, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subsection (h) to read as follows:

*(h) It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel.*

SECTION 1.0301. Section 361.421(5), Health and Safety Code, as added by S.B. No. 1340, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(5) "Recyclable material" means material that has been recovered or diverted from the *non-hazardous* solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

SECTION 1.031. Section 362.004(a), Health and Safety Code, is amended to read as follows:

(a) This chapter does not limit the authority of the Texas *Natural Resource Conservation* [~~Water~~] Commission[, ~~the Texas Department of Health,~~] or a local government to:

(1) perform a power or duty provided by other law; or

(2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

SECTION 1.032. Sections 363.004(2), (3), and (4), Health and Safety Code, are amended to read as follows:

(2) "Board" means the Texas *Natural Resource Conservation Commission* [~~Board of Health~~].

(3) "Commissioner" means the *executive director of the Texas Natural Resource Conservation Commission* [~~commissioner of health~~].

(4) "Department" means the Texas *Natural Resource Conservation Commission* [~~Department of Health~~].

SECTION 1.033. Section 363.005, Health and Safety Code, is amended to read as follows:

Sec. 363.005. APPLICATION OF CHAPTER. This chapter applies only to solid waste and hazardous waste *as described by Sections 361.011 and 361.012* [~~under the department's jurisdiction as defined by Chapter 361 (Solid Waste Disposal Act)~~].

SECTION 1.034. Section 364.011(c), Health and Safety Code, is amended to read as follows:

(c) A rule adopted under this section may not authorize an activity, method of operation, or procedure that is prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules of the Texas *Natural Resource Conservation* [~~Department of Health, the Texas Water~~] Commission[, ~~or the board~~].

SECTION 1.035. Section 364.012(b), Health and Safety Code, is amended to read as follows:

(b) To prohibit the disposal of solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which solid waste disposal is not prohibited. The requirement in this subsection does not apply if the county has adopted solid waste disposal guidelines approved by the Texas *Natural Resource Conservation Commission* ~~[Department of Health]~~.

SECTION 1.036. Section 365.012(c), Health and Safety Code, is amended to read as follows:

(c) It is a defense to prosecution under this section that the disposal occurred:

(1) at a solid waste site permitted by the Texas *Natural Resource Conservation* ~~[Water]~~ Commission ~~[or the Texas Department of Health]~~;

(2) at a solid waste site licensed by a county under Chapter 361 (Solid Waste Disposal Act); or

(3) in a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

SECTION 1.037. Section 365.013(e), Health and Safety Code, is amended to read as follows:

(e) The Texas *Natural Resource Conservation Commission* ~~[Department of Health]~~ shall adopt rules and standards regulating the processing and treating of refuse, garbage, rubbish, or junk dumped, deposited, or left within 300 yards of a public highway. Subsection (c) does not apply if the refuse, garbage, rubbish, or junk is processed and treated in accordance with those rules and standards. A person commits an offense if the person violates a rule adopted under this subsection.

SECTION 1.038. Sections 366.002(2) and (3), Health and Safety Code, are amended to read as follows:

(2) "Board" means the Texas *Natural Resource Conservation Commission* ~~[Board of Health]~~.

(3) "Department" means the Texas *Natural Resource Conservation Commission* ~~[Department of Health]~~.

SECTION 1.039. Section 367.001(2), Health and Safety Code, is amended to read as follows:

(2) "Department" means the Texas *Natural Resource Conservation Commission* ~~[Department of Health]~~.

SECTION 1.040. Section 367.002, Health and Safety Code, as amended by Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 367.002. COMPOSITION OF COUNCIL. The On-site Wastewater Treatment Research Council is composed of the following 11 members appointed by the governor:

(1) two builders of housing constructed on-site in this state;

(2) one residential real estate developer;

(3) one professional engaged in municipal or county regulation of on-site wastewater treatment in this state;

(4) one practicing engineer with significant experience designing on-site wastewater treatment systems;

(5) ~~two employees [one employee of the department;~~

~~[(6) one employee]~~ of the Texas *Natural Resource Conservation* ~~[Water]~~ Commission;

~~(6) [(7)]~~ one representative of an industry using on-site wastewater treatment in this state as part of its commercial or manufacturing process;

~~(7) [(8)]~~ one person employed in the field of rural water quality in this state;

~~(8) [(9)]~~ one soils scientist who is involved in and familiar with innovative on-site wastewater disposal techniques; and

(9) [(10)] one representative of the public with a demonstrated involvement in efforts to safeguard the environment.

SECTION 1.041. Effective December 1, 1991, Section 367.007, Health and Safety Code, is amended to read as follows:

Sec. 367.007. ADMINISTRATION. (a) The department, *at the direction of the council*, shall implement council decisions.

(b) The council may enter into an interagency contract with the department to provide staff and other administrative support as required *to improve the quality of wastewater treatment and reduce the cost of providing wastewater treatment to consumers*.

(c) *The council may accept grants and donations from other sources to supplement the fees collected under Section 367.010. Grants and donations shall be deposited to the credit of the on-site wastewater treatment research account of the general revenue fund and may be disbursed as the council directs and in accordance with Section 367.008.*

(d) *Administrative and facilities support costs are payable from the on-site wastewater treatment research account.*

SECTION 1.042. Effective December 1, 1991, Section 367.008(b), Health and Safety Code, is amended to read as follows:

(b) The council may award competitive grants to:

(1) support applied research *and demonstration projects by [at] accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers* regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(2) enhance technology transfer regarding on-site wastewater treatment by using educational courses, seminars, symposia, publications, and other forms of information dissemination.

SECTION 1.043. Section 369.001(1), Health and Safety Code, as added by Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(1) "Department" means the Texas *Natural Resource Conservation Commission* [~~Department of Health~~].

SECTION 1.044. Sections 370.002(2) and (4), Health and Safety Code, as added by Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(4) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.045. Sections 371.003(2) and (3), Health and Safety Code, as added by S.B. No. 1340, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(2) "Board" means the Texas *Natural Resource Conservation Commission* [~~Board of Health~~].

(3) "Department" means the Texas *Natural Resource Conservation Commission* [~~Department of Health~~].

SECTION 1.046. The heading to Subtitle B, Title 5, Health and Safety Code, as amended by Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE,  
[AND] LITTER, AND WATER

SECTION 1.047. Chapter 421, Health and Safety Code, as added by S.B. No. 587, Acts of the 72nd Legislature, Regular Session, 1991, is renumbered as Chapter 372, Health and Safety Code; Sections 421.001-421.005, Health and Safety Code, as added by that Act, are renumbered as Sections 372.001-372.005, Health and Safety Code; and appropriate cross-references are changed.

SECTION 1.048. Sections 421.001(1), (2), and (3), Health and Safety Code, as added by S.B. No. 587, Acts of the 72nd Legislature, Regular Session, 1991 (renumbered as Section 372.001 by this Act), are amended to read as follows:

(1) "Board" means the Texas Natural Resource Conservation Commission [~~Board of Health~~].

(2) "Commissioner" means the *executive director of the Texas Natural Resource Conservation Commission* [~~commissioner of health~~].

(3) "Department" means the Texas Natural Resource Conservation Commission [~~Department of Health~~].

SECTION 1.049. Section 421.003(d), Health and Safety Code, as added by S.B. No. 587, Acts of the 72nd Legislature, Regular Session, 1991 (renumbered as Section 372.003 by this Act), is amended to read as follows:

(d) Rules adopted or amended under this section shall be developed by the board in conjunction with a technical advisory panel of designated representatives of the Texas Water Development Board, [~~the Texas Water Commission,~~] the Texas State Board of Plumbing Examiners, and the Texas Natural Resource Conservation Commission [~~department~~].

SECTION 1.050. Chapter 401, Health and Safety Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

Sec. 401.411. *DEFINITION. In this subchapter, "radioactive substance" includes by-product material, radioactive material, radioactive waste, source material, source of radiation, and special nuclear material as those terms are defined by Section 401.003.*

Sec. 401.412. *COMMISSION LICENSING AUTHORITY. (a) Notwithstanding any other provision of this chapter and subject to Section 401.102, the Texas Natural Resource Conservation Commission has sole authority to directly regulate and issue licenses for the disposal of radioactive substances.*

*(b) The Texas Natural Resource Conservation Commission may adopt any rules reasonably necessary to exercise its authority under this section.*

Sec. 401.413. *COMMISSION DISPOSAL LICENSE REQUIRED. A person required by another section of this chapter to obtain a license for the disposal of a radioactive substance is required to obtain the license from the Texas Natural Resource Conservation Commission and not from the department.*

Sec. 401.414. *MEMORANDUM OF UNDERSTANDING. The Texas Natural Resource Conservation Commission and the board of health by rule shall adopt a memorandum of understanding defining their respective duties under this chapter.*

Sec. 401.415. *NORM WASTE. The Texas Natural Resource Conservation Commission shall consult with the Railroad Commission of Texas before adopting any rules necessary to exercise its authority over the regulation of naturally occurring radioactive materials (NORM) that occur from the exploration and production of oil and gas. The Texas Natural Resource Conservation Commission and the Railroad Commission of Texas shall adopt a memorandum of understanding defining their respective*

*enforcement duties, with preference given to enforcement by the Railroad Commission of Texas for the enforcement of oil-related and gas-related NORM activities.*

SECTION 1.051. Subchapter F, Chapter 402, Health and Safety Code, is amended by adding Sections 402.1511 and 402.1512 to read as follows:

*Sec. 402.1511. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION LICENSE. (a) Notwithstanding any other provision of this chapter, the Texas Natural Resource Conservation Commission has sole authority to issue a license to operate a disposal site under this chapter.*

*(b) The authority or any other entity authorized to operate a disposal site under this chapter may not operate the disposal site unless the authority or entity has first obtained an operating license from the commission under this section.*

*(c) The authority or any other entity required by this chapter to obtain a license to operate a disposal site under this chapter is required to obtain the license from the commission and not from the department.*

*(d) The commission may adopt any rules reasonably necessary to exercise its authority under this section.*

*Sec. 402.1512. MEMORANDUM OF UNDERSTANDING. The Texas Board of Health and the Texas Natural Resource Conservation Commission by rule shall adopt a memorandum of understanding defining their respective duties under this chapter.*

SECTION 1.0511. Section 402.219(c), Health and Safety Code, as added by S.B. No. 553, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(c) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045;

(2) gives this state full administrative control over management and operation of the disposal site;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the disposal site;

(4) allows this state to charge a fee for the disposal of *low-level* radioactive waste at the disposal site;

(5) requires the other state or states to join in any legal action involving liability from the disposal site;

(6) requires the other state or states to share the full cost of constructing the disposal site;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the county in which the disposal site is located an amount not *less than* ~~to exceed the lesser of~~ \$1 million or *10* ~~five~~ percent of the amount contributed *by the other state or states* ~~toward construction as provided by Subdivision (6)~~;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

SECTION 1.052. Section 3, Chapter 569, Acts of the 71st Legislature, Regular Session, 1989 (Article 4477-7i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. MEMBERSHIP. The council is composed of *nine* ~~12~~ members as follows:

(1) ~~a representative from the governor's office appointed by the governor;~~



~~[(2)]~~ one member from each house of the legislature, appointed by the presiding officer of the applicable house;

(2) ~~[(3)]~~ a representative of the general public appointed by the governor;

(3) ~~[(4)]~~ a management representative of the motor carrier industry that is involved with the transportation of hazardous materials appointed by the governor;

(4) ~~[(5)]~~ a management representative of the railroad industry appointed by the governor;

(5) ~~[(6)]~~ a management representative of a company that manufactures or receives hazardous materials appointed by the governor; and

(6) ~~[(7)]~~ one representative from each of the following state agencies, appointed by the executive director or commissioner of each respective agency:

(A) the Railroad Commission of Texas;

(B) the Texas Department of Public Safety; and

(C) the Texas *Natural Resource Conservation* ~~[Water]~~ Commission[;]

~~[(D) the Texas Department of Health; and~~

~~[(E) the Texas Air Control Board].~~

SECTION 1.053. Section 10, Chapter 569, Acts of the 71st Legislature, Regular Session, 1989 (Article 4477-7i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. RELATIONSHIP TO OTHER LAWS. Except as specifically provided by this Act, this Act does not diminish or limit the authority of the Texas *Natural Resource Conservation* ~~[Department of Health, the Texas Water]~~ Commission[,], or any other state agency in performing the functions relating to spills of hazardous materials vested in those agencies by law.

SECTION 1.054. Section 40.003, Natural Resources Code, as added by Chapter 10, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subdivision (27) to read as follows:

(27) "*Texas Water Commission*" means the Texas *Natural Resource Conservation Commission*.

SECTION 1.055. Section 40.151(e), Natural Resources Code, as added by Chapter 10, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) When the balance of the fund reaches \$25 million, income on the investment, in an amount not to exceed \$5 million, shall be transferred to the Railroad Commission of Texas for the *oil-field cleanup* ~~[well-plugging]~~ fund. Income on the investment of that \$25 million in excess of \$5 million shall be credited to the fund.

SECTION 1.056. Section 6.001(3), Water Code, as amended by S.B. No. 1059, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(3) "Commission" means the Texas *Natural Resource Conservation* ~~[Water]~~ Commission.

SECTION 1.057. Sections 11.002(1) and (3), Water Code, are amended to read as follows:

(1) "Commission" means the Texas *Natural Resource Conservation* ~~[Water]~~ Commission.

(3) "Executive director" means the executive director of the Texas *Natural Resource Conservation* ~~[Water]~~ Commission.

SECTION 1.058. Sections 13.002(5) and (8), Water Code, are amended to read as follows:

(5) "Commission" means the Texas *Natural Resource Conservation* ~~[Water]~~ Commission.

(8) "Executive director" means the executive director of the Texas *Natural Resource Conservation* ~~[Water]~~ Commission.

SECTION 1.059. Sections 15.001(2) and (4), Water Code, are amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [Water] Commission.

(4) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [Water] Commission.

SECTION 1.060. Section 15.011(b), Water Code, is amended to read as follows:

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C of this chapter, the storage acquisition fund created under Subchapter E of this chapter, the research and planning fund created under Subchapter F of this chapter, [and] the Pecos River compact account created under Subchapter K of this chapter, and the hydrographic survey account created under Subchapter L of this chapter, provided the hydrographic survey account transfer does not exceed \$425,000.

SECTION 1.061. Section 15.012(c), Water Code, is amended to read as follows:

(c) Money appropriated to the fund by the legislature for a specific purpose stated in Subchapter C, E, F, [or] K, or L of this chapter shall be placed in the appropriate fund or account created by that subchapter.

SECTION 1.062. Chapter 15, Water Code, is amended by adding Subchapter L to read as follows:

#### SUBCHAPTER L. HYDROGRAPHIC SURVEY PROGRAM

*Sec. 15.801. DEFINITIONS. In this subchapter:*

(1) "Account" means the hydrographic survey account established under Section 15.802 of this code.

(2) "Program" means the hydrographic survey program established under this subchapter.

(3) "Survey" means a hydrographic survey performed by the board under Section 15.804 of this code.

*Sec. 15.802. HYDROGRAPHIC SURVEY ACCOUNT. The hydrographic survey account is created as a special account in the water assistance fund and is composed of:*

(1) money appropriated to the board for the program;

(2) fees collected by the board under this subchapter;

(3) money transferred to the account from the water assistance fund under Section 15.011(b) of this code; and

(4) interest earned on the investment of money in the account.

*Sec. 15.803. USE OF ACCOUNT. Money in the account may be used only to pay the costs of surveys and the costs of capital equipment and personnel necessary to administer the program.*

*Sec. 15.804. HYDROGRAPHIC SURVEYS. (a) On the request of a political subdivision, the board may perform for the political subdivision a hydrographic survey:*

(1) to determine:

(A) reservoir storage capacity;

(B) sedimentation levels;

(C) rates of sedimentation;

(D) projected water supply availability; and

(E) potential mitigative measures; and

(2) for other bathymetric studies.

*(b) The board by rule shall prescribe fees for surveys performed under this section in an amount adequate to pay the necessary and reasonable costs of the program.*

*Sec. 15.805. RULES. The board may adopt any rules reasonably necessary to administer the program.*

SECTION 1.063. This article takes effect on the earliest date allowed under Article III, Section 39, of the Texas Constitution.

SECTION 1.064. Sections 16.001(2) and (4), Water Code, are amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(4) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.065. Sections 17.001(2) and (4), Water Code, are amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(4) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.066. Sections 18.002(1) and (2), Water Code, are amended to read as follows:

(1) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(2) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.067. Sections 27.002(1) and (2), Water Code, are amended to read as follows:

(1) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(2) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.068. Sections 26.001(2) and (4), Water Code, are amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(4) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.069. Section 30.004(a), Water Code, is amended to read as follows:

(a) This chapter is cumulative of other statutes governing the Texas Department of Health [~~Resources~~], the Texas Water Development Board, and the Texas *Natural Resource Conservation* [~~Water~~] Commission relating to:

- (1) the issuance of bonds;
- (2) the collection, transportation, treatment, or disposal of waste; and
- (3) the design, construction, acquisition, or approval of facilities for these purposes.

SECTION 1.070. Section 30.106, Water Code, is amended to read as follows:

Sec. 30.106. SUPERVISION BY TEXAS *NATURAL RESOURCE CONSERVATION* [~~WATER~~] COMMISSION. The Texas *Natural Resource Conservation* [~~Water~~] Commission is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

SECTION 1.071. Title 2, Water Code, is amended by adding Chapter 32 to read as follows:

## CHAPTER 32. WATER WELL DRILLERS

*Sec. 32.001. DEFINITIONS. In this chapter:*

- (1) "Commission" means the Texas Natural Resource Conservation Commission.
- (2) "Council" means the Texas water well drillers advisory council.
- (3) "Dewatering well" means an artificial excavation constructed to produce groundwater to lower the water table or potentiometric surface. The term does not include a dewatering well that is used to produce or to facilitate the production of minerals under a state regulatory program.
- (4) "Dewatering well driller" means a person, including an owner, an operator, a contractor, or a drilling supervisor, who drills, bores, cores, or constructs a dewatering well. The term does not include a person who drills, bores, cores, or constructs a dewatering well under the direct supervision of a licensed dewatering well driller and who is not primarily responsible for the drilling operation.
- (5) "Driller" means a water well driller, injection well driller, dewatering well driller, or monitoring well driller.
- (6) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.
- (7) "Injection well" includes:
  - (A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;
  - (B) a cooling water return flow well used to inject water that has been used for cooling;
  - (C) a drainage well used to drain surface fluid into a subsurface formation;
  - (D) a recharge well used to replenish water in an aquifer;
  - (E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;
  - (F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
  - (G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and
  - (H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.
- (8) "Injection well driller" means a person, including an owner, an operator, a contractor, or a drilling supervisor, who drills, bores, cores, or constructs an injection well. The term does not include a person who drills, bores, cores, or constructs an injection well under the direct supervision of a licensed injection well driller and who is not primarily responsible for the drilling operation.
- (9) "Licensed driller" means a person who holds a license issued by the state under this chapter.
- (10) "Licensing department" means the Texas Department of Licensing and Regulation.
- (11) "Monitoring well" means an artificial excavation constructed to measure or monitor the quantity or movement of substances below the surface of the ground. The term does not include any monitoring well used in conjunction with the production of oil, gas, or other minerals.
- (12) "Monitoring well driller" means a person, including an owner, an operator, a contractor, or a drilling supervisor, who drills, bores, cores, or constructs a monitoring well.
- (13) "Person" means an individual, firm, partnership, association, corporation, or any other private legal entity.

(14) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that makes the water harmful to humans, animals, vegetation, or property or that impairs the public enjoyment of the water for a reasonable purpose.

(15) "Water well" means any artificial excavation constructed for the purpose of exploring for or producing groundwater. The term does not include:

(A) a test or blast hole in quarries or mines or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the holes are also used to produce groundwater; or

(B) an injection water source well regulated under Section 91.101, Natural Resources Code.

(16) "Water well driller" means a person, including an owner, an operator, a contractor, or a drilling supervisor, who drills, bores, cores, or constructs a water well in this state. The term does not include a person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a licensed driller and is not primarily responsible for the drilling operations.

(17) "Well" means a water well, injection well, dewatering well, or monitoring well.

**Sec. 32.002. LICENSE REQUIRED.** (a) A person may not act as or offer to perform services as a driller unless the person holds a license issued by the commission under this chapter and under rules adopted under this chapter and approved by the licensing department.

(b) An application for a license must contain the applicant's:

(1) name;

(2) business address;

(3) permanent mailing address; and

(4) any other relevant information required by the commission.

(c) At the time of application, each applicant shall pay to the commission a nonrefundable examination fee.

(d) A person qualifying for a license shall pay to the commission the license fee set by the commission.

(e) Except as provided by Section 32.003 of this code, a license issued under this chapter expires August 31 of each year. On or before that day, each licensee shall pay an annual fee to the commission to renew the license. The commission shall notify each licensee in writing of the licensee's impending license expiration not later than August 1 of each year. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the commission the required renewal fee and a late fee equal to one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the commission all unpaid renewal fees and a late fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) The commission shall maintain a current register of licensees.

(g) A license is not transferable or assignable.

(h) The commission shall issue a duplicate license to replace a lost or destroyed license on proper application and payment of a fee.

(i) The commission by rule shall set the fees imposed by this chapter in amounts approved by the licensing department that are reasonable and necessary to cover the costs of administering this chapter.

(j) *An applicant must have been a resident of this state at least 90 days before applying for a license under this chapter.*

**Sec. 32.003. STAGGERED RENEWAL OF LICENSES.** *The commission by rule approved by the licensing department may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license renewal fees payable on August 31 shall be prorated. On renewal of the license on the new expiration date, the total license renewal fee is payable.*

**Sec. 32.004. PERSONS LICENSED IN OTHER STATES.** *The commission may adopt rules approved by the licensing department allowing waiver of a license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.*

**Sec. 32.005. REPORTING OF WELL LOGS.** (a) *Every licensed driller drilling, deepening, or otherwise altering a water well in this state shall make and keep a legible and accurate well log in accordance with commission rule on forms prescribed by the commission. Not later than the 60th day after the completion or cessation of drilling, deepening, or otherwise altering the well, the licensed driller shall deliver or transmit by certified mail a copy of the well log to the commission and to the owner of the well or the person for whom the well was drilled. Each copy of a well log, other than a commission copy, must include the name, mailing address, and telephone number of the commission.*

(b) *The well log shall be recorded at the time of drilling and must show the depth, thickness, and character of the strata penetrated, the location of water-bearing strata, the depth, size, and character of casing installed, and any other information required by commission rule.*

(c) *The commission shall hold the contents of the well log confidential and not a matter of public record if it receives, by certified mail, a written request to do so from the owner or the person for whom the well was drilled.*

**Sec. 32.006. WATER WELL DRILLERS ADVISORY COUNCIL.** (a) *The Texas water well drillers advisory council is composed of nine members appointed by the commission. Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.*

(b) *Six members of the council shall be licensed drillers who are residents of this state, experienced in the well drilling business, and conversant in well drilling and completion and plugging methods and techniques. One driller shall be selected from the state at large and one of each of the remaining five drillers shall be selected from the following geographic areas of the state:*

- (1) *Gulf Coast area;*
- (2) *Trans-Pecos area;*
- (3) *Central Texas area;*
- (4) *Northeast Texas area; and*
- (5) *Panhandle-South Plains area.*

(c) *Only one driller member may be employed by or own an interest in the same company, firm, or business association engaged in any phase of the well drilling business.*

(d) *Three members must be representatives of the public. A person is not eligible for appointment as a public member if the person or the person's spouse:*

- (1) *is licensed by an occupational regulatory agency in the field of well drilling;*
- or*

- (2) *is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling.*

(e) *A council member or an employee of the commission connected with the administration of this chapter may not be an officer, employee, or paid consultant of*

a trade association in the well drilling industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the well drilling industry.

(f) A person who, because of the person's activities on behalf of a trade or professional association in the well drilling industry, is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council.

(g) It is a ground for removal from the council if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b), (c), or (d) of this section for appointment to the council;

(2) does not maintain during service on the council the qualifications required by Subsection (b), (c), or (d) of this section for appointment to the council;

(3) violates a prohibition prescribed by Subsection (e) or (f) of this section; or

(4) fails to attend at least one-half of the regularly scheduled meetings held each year, excluding meetings held when the person was not a council member.

(h) A member of the council serves a six-year term, with the term expiring September 15.

(i) A member of the council is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the council. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(j) The council shall hold meetings at the call of the chairman. Meetings shall be conducted in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(k) A majority of the council constitutes a quorum for conducting business.

(l) The council shall elect a chairman by a majority vote at the first meeting each year.

Sec. 32.007. **EXAMINATIONS.** (a) The commission, with the advice of the council and subject to the approval of the licensing department, shall prepare licensing examinations, pass on the qualifications of license applicants, and issue licenses to those who qualify.

(b) The commission shall design written examinations in a manner that disqualifies a person lacking in the necessary knowledge of drilling, of completion and plugging methods and techniques, and of groundwater formations to the extent that the performance by the person of services as a driller would create a serious risk of polluting fresh water. The commission may prescribe additional requirements for the examination of monitoring well drillers and may prescribe additional requirements relating to water conservation for the examination of dewatering well drillers. An applicant may elect to have the examination given orally.

(c) The commission shall offer examinations at least once a year. The commission shall offer the examinations more frequently if more than 10 persons petition for an additional examination.

(d) The commission shall administer the examination so that a person grading the examination does not know whose paper is being graded.

(e) Not later than the 30th day after the date a licensing examination is administered under this chapter, the commission shall notify each examinee of the results of the examination.

(f) The commission shall maintain files of examination papers. A person, at any time within six months of the date that the person is notified of the results of an examination, is entitled to inspect the person's examination paper during normal business hours at the commission's offices for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading. If requested in writing by a person who fails the licensing examination, the commission shall furnish the person with an analysis of the person's performance on the examination.

(g) A person who fails an examination may, on payment of the examination fee, apply for a subsequent examination.

**Sec. 32.008. CONTINUING EDUCATION.** The commission, with the participation of the council, may recognize, prepare, or offer continuing education programs for licensees. Participation in continuing education programs is voluntary.

**Sec. 32.009. RULES AND REGULATIONS.** (a) The commission shall adopt rules as necessary to enforce this chapter, including rules governing applications for a license, qualifications of applicants, standards of conduct for licensed drillers including marking of well drilling rigs and equipment, and rules governing procedure and practice before the commission. Rules adopted under this section are subject to the approval of the licensing department.

(b) The commission may enforce by injunction or other appropriate remedy in courts of competent jurisdiction any rule, decisions, determinations, or orders adopted or entered by it that do not conflict with a statute. The attorney general shall represent the commission on request.

(c) The commission shall adopt rules in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

**Sec. 32.010. REVOCATION OF LICENSES.** (a) The commission may, after notice and hearing, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted under this chapter.

(b) Grounds for revocation, suspension, probation, or reprimand include:

(1) making an intentional misstatement or misrepresentation of fact on an application or well log;

(2) failing to keep and transmit well logs as required by this chapter;

(3) failing to advise a person for whom a well is being drilled that injurious water has been encountered, is a pollution hazard, and must be immediately plugged in an acceptable manner; or

(4) being an incompetent driller.

(c) The commission, before revoking a license, placing a licensee on probation, or reprimanding a licensee, shall notify the licensee in writing of the alleged violation and provide the licensee with an opportunity for a hearing. The notice shall be given not later than the 10th day before the date set for the hearing. The notice shall be made by registered mail to the last known business address of the licensee. The licensee, each person complaining against the licensee, and any other witness whose testimony is relied on to substantiate the charges made may be present at the hearing. The licensee may present relevant oral or written evidence.

(d) Each decision and order in a disciplinary hearing rendered by the commission must be made in writing and must set forth briefly the findings of fact and the commission's conclusions. Parties to the proceedings shall be notified of the decision or order not later than the 30th day after the conclusion of the hearing.

**Sec. 32.011. ADMINISTRATIVE PENALTY.** (a) If a person fails to comply with a provision of this chapter or a rule adopted by the commission under this chapter, the person may be assessed, in addition to other penalties, an administrative penalty set by the commission in an amount not to exceed \$2,500 for each violation.

(b) In determining the amount of the penalty, the commission shall consider the person's history of previous violations and the seriousness of the failure to comply.

(c) An administrative penalty may be assessed under this section only after the person charged with a violation has been given an opportunity for a public hearing.

(d) If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and, when appropriate, an order that a penalty be paid.



(e) If the person charged with a violation does not appear for the hearing, the commission may assess a penalty and issue an order that the penalty be paid after the commission has determined that a violation occurred.

(f) Not later than the 30th day after the date on which an order is issued, the commission shall inform a person ordered to pay a penalty under this section of the amount of the penalty.

(g) Not later than the 30th day after the date the order becomes final under Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full;

(2) forward the amount to the commission for placement in an escrow account pending judicial review of the matter; or

(3) post with the commission a supersedeas bond for the amount of the penalty until judicial review is final.

(h) Failure to comply with Subsection (g) of this section is a waiver of the right to contest the order.

(i) If a court determines that a violation has not occurred or that the amount of the penalty should be reduced or not assessed, the commission shall remit the appropriate amount to the person with interest or execute release of the bond.

(j) An administrative penalty owed under this section may be recovered in a civil action brought by the attorney general at the request of the commission.

**Sec. 32.012. APPEAL OF COMMISSION ACTION.** (a) A person affected by a ruling, order, decision, or other act of the commission may appeal by filing a petition in a district court in Travis County.

(b) A petition must be filed not later than the 30th day after the date of the commission's action or, in the case of a ruling, order, or decision, not later than the 30th day after its effective date.

(c) Service of citation on the commission shall be accomplished not later than the 30th day after the date the petition was filed. Citation may be served on the executive director.

(d) The plaintiff must pursue the action with reasonable diligence.

(e) The substantial evidence rule applies in the judicial review of any commission action, ruling, order, or decision. An administrative or executive action taken before the filing of the suit continues in force and effect until the rights of the parties are determined by the court.

**Sec. 32.013. COMPLAINTS.** (a) The commission shall prepare information of consumer interest describing the procedures by which consumer complaints are filed with and resolved by it. The commission shall make the information available to the public and appropriate state agencies.

(b) If a written complaint is filed with the commission relating to a licensee, the commission, at least quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. The commission shall maintain a file about each complaint filed against a licensee.

**Sec. 32.014. DISPOSITION OF REVENUES.** (a) The financial transactions of the commission in connection with the administration of this chapter are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) All money collected by the commission under this chapter shall be deposited to the credit of the water well drillers fund.

**Sec. 32.015. CIVIL PENALTY.** A person who fails to comply with this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not less than \$200 or more than \$1,000 for each day of noncompliance or each act of noncompliance as determined by the court. The commission may also seek injunctive relief for a violation of this chapter. The action may be brought by the commission in

any court of competent jurisdiction in Travis County or the county in which the offending activity occurred or in which the person resides. At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover the civil penalty, or for both the injunctive relief and civil penalty, as authorized by this section. A party to an action may appeal from a final judgment as in other civil cases. The obtaining of a license under this chapter by a person does not relieve the person from liability under law.

**Sec. 32.016. MARKING RIGS WITH IDENTIFICATION NUMBER.** A driller shall legibly mark all rigs used by the driller or the driller's employees in the well drilling business with the license number that appears on the driller's license. The commission shall adopt rules specifying the method and manner for marking the rigs.

**Sec. 32.017. PLUGGING OF WATER WELLS.** (a) A licensed driller shall complete a well under standards and procedures adopted by the commission.

(b) A licensed driller shall notify the commission and the landowner or person having a well drilled when the driller encounters water injurious to vegetation, land, or other water, and the well must be plugged, repaired, or properly completed in order to avoid injury or pollution. The driller shall assure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the commission.

(c) Not later than the 180th day after the date on which a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person who possesses an abandoned or deteriorated well shall have the well plugged or capped under standards and procedures adopted by the commission. A licensed driller who knows of an abandoned or deteriorated well shall notify the landowner or person possessing the well that the well must be plugged or capped in order to avoid injury or pollution.

(d) In this section, a well is considered to be abandoned if the well is not in use. A well is considered to be in use in the following cases:

- (1) a nondeteriorated well which contains the casing, pump, and pump column in good condition;
- (2) a nondeteriorated well which has been capped;
- (3) the water from the well has been put to an authorized beneficial use, as defined in this code, unless subject to Subdivision (5) of this subsection;
- (4) it is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
- (5) the owner is participating in the Conservation Reserve Program authorized by Sections 1231 through 1236 of the Food Security Act of 1985 (16 U.S.C. Sections 3831–3836) or any other similar governmental program.

(e) A person who plugs an abandoned or deteriorated well shall submit a plugging report to the executive director not later than the 30th day after the date the well is plugged. The commission shall furnish plugging report forms on request.

**Sec. 32.018. CONSTRUCTION.** This chapter does not affect the ownership or the rights of owners of the land in underground water.

**Sec. 32.019. TRANSFER OF FUNCTIONS.** If the functions of the commission necessary to the proper implementation of its duties under this chapter are transferred to another agency, the powers and duties given in this chapter to the commission shall be transferred to the other agency.

**SECTION 1.072.** Title 2, Water Code, is amended by adding Chapter 33 to read as follows:

#### **CHAPTER 33. WATER WELL PUMP INSTALLERS**

**Sec. 33.001. DEFINITIONS.** In this chapter:

- (1) "Council" means the Texas water well drillers advisory council.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(4) "Licensing department" means the Texas Department of Licensing and Regulation.

(5) "Installer" means a person who installs or repairs well pumps and equipment. The term does not include a person who installs or repairs well pumps and equipment on the person's own property for the person's own use or a person who assists in the procedure of pump installation under the direct supervision of a licensed installer and is not primarily responsible for the installation.

(6) "Licensed installer" means a person who holds a license issued under this chapter.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other private legal entity.

(8) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that makes the water harmful to humans, animals, vegetation, or property or that impairs the public enjoyment of water for a reasonable purpose.

(9) "Pump installation" means the procedures employed in the placement and preparation for operation of equipment and materials used to obtain water from a well, including construction involved in making the well and establishing seals and safeguards as necessary to protect the water from contamination and including repairs to an existing pump.

(10) "Well" means a water well, injection well, dewatering well, or monitoring well as those terms are defined by Section 32.001. The term does not include an injection water source well regulated under Section 91.101, Natural Resources Code.

(11) "Well pumps and equipment" means equipment and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

**Sec. 33.002. LICENSE REQUIRED.** (a) A person may not act as or offer to perform the services of an installer unless the person holds a license issued by the commission under rules adopted under this chapter and approved by the licensing department.

(b) An application for a license must contain the applicant's:

(1) name;

(2) business address;

(3) permanent mailing address; and

(4) any other information required by the commission.

(c) At the time of application, an applicant shall pay to the commission a nonrefundable examination fee. A person qualifying for a license shall pay to the commission the license fee set by the commission.

(d) Except as provided by Section 33.003 of this code, a license issued under this chapter expires on August 31 of each year. On or before that day, each licensee shall pay an annual fee to the commission to renew the license. The commission shall notify each licensee in writing of the impending license expiration not later than August 1 of each year. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the commission the required renewal fee and a late fee that is equal to one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the commission all unpaid renewal fees and a late fee that is equal to the examination fee for the license. If a person's license has been expired two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements for obtaining an original license.

(e) *The commission shall maintain a current register of licensees.*

(f) *A license is not transferable or assignable.*

(g) *The commission shall issue a duplicate license to replace a lost or destroyed license on proper application and payment of a fee.*

(h) *The commission by rule shall set the fees imposed under this chapter in amounts approved by the licensing department that are reasonable and necessary to cover the costs of administering this chapter.*

(i) *An applicant must be a resident of this state for at least 90 days before being eligible to apply for a license as an installer under this chapter.*

**Sec. 33.003. STAGGERED RENEWAL OF LICENSES.** *The commission by rule approved by the licensing department may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license renewal fees payable on August 31 shall be prorated. On renewal of the license on the new expiration date, the total license renewal fee is payable.*

**Sec. 33.004. PERSONS LICENSED IN OTHER STATES.** *The commission may adopt rules approved by the licensing department allowing waiver of a license requirement for an applicant with a valid license from another state that has license requirements substantially equivalent to those of this state.*

**Sec. 33.005. EXAMINATIONS.** (a) *The commission, with the advice of the council and subject to the approval of the licensing department, shall prepare licensing examinations, pass on the qualifications of license applicants, and issue licenses to those who qualify.*

(b) *The commission shall design written examinations in such a manner as to disqualify a person lacking the knowledge of pump installation to the extent that the performance by the person of pump installation would create a serious risk of polluting fresh water.*

(c) *The commission shall offer examinations prepared by it at least once a month and more frequently if more than 10 persons petition it for an additional examination. The examination shall be administered so that a person grading the examination does not know whose paper is being graded. The commission shall maintain files of examination papers.*

**Sec. 33.006. CONTINUING EDUCATION.** *The commission, with the participation of the council, may recognize, prepare, or offer continuing education programs for licensees. Participation in continuing education programs is voluntary.*

**Sec. 33.007. RULES.** (a) *The commission shall adopt rules, approved by the licensing department, as necessary to enforce this chapter.*

(b) *The commission may enforce by injunction or other appropriate remedy in courts of competent jurisdiction any rule, decisions, determinations, or orders adopted or entered by it that do not conflict with a statute. The attorney general shall represent the commission on request.*

(c) *The commission shall adopt rules in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

**Sec. 33.008. REVOCATION OF LICENSES.** (a) *The commission may revoke a license, place a licensee on probation, or reprimand a licensee for a violation of this chapter or a rule adopted under this chapter.*

(b) *The commission, before revoking a license, placing a licensee on probation, or reprimanding a licensee, shall notify the licensee in writing of the alleged violation and provide the licensee with an opportunity for a hearing. The notice shall be given not later than the 10th day before the date set for the hearing. The notice shall be made by registered mail to the last known business address of the licensee. The licensee, each person complaining against the licensee, and any other witness whose testimony is relied on to substantiate the charges made may be present at the hearing. The licensee may present relevant oral or written evidence.*

(c) Each decision and order in a disciplinary hearing rendered by the commission must be made in writing and must set forth briefly the findings of fact and the commission's conclusions. Parties to the proceedings shall be notified of the decision or order not later than the 30th day after the conclusion of the hearing.

**Sec. 33.009. ADMINISTRATIVE PENALTY.** (a) If a person fails to comply with a provision of this chapter or a rule adopted by the commission under this chapter, the person may be assessed, in addition to other penalties, an administrative penalty set by the commission in an amount not to exceed \$2,500 for each violation.

(b) In determining the amount of the penalty, the commission shall consider the person's history of previous violations and the seriousness of the failure to comply.

(c) An administrative penalty may be assessed under this section only after the person charged with a violation has been given an opportunity for a public hearing.

(d) If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and, when appropriate, an order that a penalty be paid.

(e) If the person charged with a violation does not appear for the hearing, the commission may assess a penalty and issue an order that the penalty be paid after the commission has determined that a violation occurred.

(f) Not later than the 30th day after the date on which an order is issued, the commission shall inform a person ordered to pay a penalty under this section of the amount of the penalty.

(g) Not later than the 30th day after the date the order becomes final under Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full;

(2) forward the amount to the commission for placement in an escrow account pending judicial review of the matter; or

(3) post with the commission a supersedeas bond for the amount of the penalty until judicial review is final.

(h) Failure to comply with Subsection (g) of this section is a waiver of the right to contest the order.

(i) If a court determines that a violation has not occurred or that the amount of the penalty should be reduced or not assessed, the commission shall remit the appropriate amount to the person with interest or execute release of the bond.

(j) An administrative penalty owed under this section may be recovered in a civil action brought by the attorney general at the request of the commission.

**Sec. 33.010. APPEAL OF COMMISSION ACTION.** (a) A person affected by a ruling, order, decision, or other act of the commission may appeal by filing a petition in a district court in Travis County.

(b) A petition must be filed not later than the 30th day after the date of the commission's action or, in the case of a ruling, order, or decision, not later than the 30th day after its effective date.

(c) Service of citation on the commission shall be accomplished not later than the 30th day after the date the petition was filed. Citation may be served on the executive director.

(d) The plaintiff must pursue the action with reasonable diligence.

(e) The substantial evidence rule applies in the judicial review of any commission action, ruling, order, or decision. An administrative or executive action taken before the filing of the suit continues in force and effect until the rights of the parties are determined by the court.

**Sec. 33.011. COMPLAINTS.** (a) The commission shall prepare information of consumer interest describing the procedures by which consumer complaints are filed

with and resolved by it. The commission shall make the information available to the public and appropriate state agencies.

(b) If a written complaint is filed with the commission relating to a licensee, the commission, at least quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. The commission shall maintain a file about each complaint filed against a licensee.

Sec. 33.012. **DISPOSITION OF REVENUES.** (a) The financial transactions of the commission in connection with the administration of this chapter are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) All money collected by the commission under this chapter shall be deposited to the credit of the water well drillers fund.

Sec. 33.013. **CIVIL PENALTY.** A person who fails to comply with this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not less than \$200 or more than \$1,000 for each day of noncompliance or each act of noncompliance as determined by the court. The commission may also seek injunctive relief for a violation of this chapter. The action may be brought by the commission in any court of competent jurisdiction in Travis County in which the offending activity occurred or in which the person resides. At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover the civil penalty, or for both the injunctive relief and civil penalty, as authorized by this section. A party to an action may appeal from a final judgment as in other civil cases. The obtaining of a license under this chapter by a person does not relieve the person from liability under law.

Sec. 33.014. **COMPLETION, REPAIR, AND PLUGGING OF WATER WELLS.** (a) Each installer licensed under this chapter shall install or repair pumps under standards and procedures adopted by the commission with the advice of the council.

(b) Each licensed installer shall notify the commission and the landowner or person having a pump installed or repaired when the installer encounters water injurious to vegetation, land, or other water, and the installer shall repair or properly complete the well in order to avoid injury or pollution. The installer shall ensure that the well is repaired or properly completed under standards and procedures adopted by the commission.

(c) A licensed installer who knows of an abandoned or deteriorated well as those terms are defined by Section 32.017 of this code shall notify the landowner or person possessing the well that the well must be plugged or capped in order to avoid injury or pollution.

Sec. 33.015. **TRANSFER OF FUNCTIONS.** If the functions of the commission necessary to the proper implementation of its duties under this chapter are transferred to any other agency, the powers and duties given to the commission in this chapter shall be transferred to the other agency.

SECTION 1.073. Subtitle D, Title 2, Water Code, is amended by adding Chapter 34 to read as follows:

#### CHAPTER 34. IRRIGATORS

Sec. 34.001. **DEFINITIONS.** In this chapter:

- (1) "Person" means a natural person.
- (2) "Council" means the Texas irrigators advisory council.
- (3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission or the executive director's designee.
- (4) "Department" means the Texas Natural Resource Conservation Commission.
- (5) "Irrigation system" means an assembly of component parts permanently installed for the controlled distribution and conservation of water for the purpose

of irrigating any type of landscape vegetation in any location or for the purpose of dust reduction or erosion control.

(6) "Irrigator" means a person who sells, designs, consults, installs, maintains, alters, repairs, or services an irrigation system including the connection of such system in and to a private or public, raw or potable water supply system or any water supply. The term does not include:

(A) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of a licensed irrigator; or

(B) an owner of a business that regularly employs a licensed irrigator who directly supervises the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems.

(7) "Licensed irrigator" means an irrigator who is licensed under this chapter.

(8) "Installer" means a person who actually connects an irrigation system to a private or public, raw or potable water supply system or any water supply.

(9) "Licensed installer" means an installer who is licensed under this chapter.

Sec. 34.002. **EXEMPTIONS.** This chapter does not apply to:

(1) any person licensed by the Texas State Board of Plumbing Examiners;

(2) a registered professional engineer or architect or landscape architect if his or her acts are incidental to the pursuit of his or her profession;

(3) irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him or her as his or her home;

(4) irrigation or yard sprinkler work done by a maintenance person incidental to and on premises owned by the business in which he or she is regularly employed or engaged and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(5) irrigation or yard sprinkler work done on the premises or equipment of a railroad by a regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(6) irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state on public property;

(7) a temporary or portable water device such as a garden hose, hose sprinkler, soaker hose, or agricultural irrigation system;

(8) a portable or solid set or other type of commercial agricultural irrigation system; or

(9) irrigation or yard sprinkler work done by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by himself or herself.

Sec. 34.003. **IRRIGATORS ADVISORY COUNCIL.** (a) The Texas irrigators advisory council is composed of nine members appointed by the department. Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) Six members of the council shall be licensed irrigators who are residents of this state, experienced in the irrigation business, and conversant in irrigation methods and techniques.

(c) Three members must be representatives of the public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

(d) A council member or an employee of the department connected with the administration of this chapter may not be an officer, employee, or paid consultant of a trade association in the irrigation industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the irrigation industry.

(e) A person who, because of the person's activities on behalf of a trade or professional association in the irrigation industry, is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council.

(f) It is a ground for removal from the council if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) or (c) of this section for appointment to the council;

(2) does not maintain during service on the council the qualifications required by Subsection (b) or (c) of this section for appointment to the council;

(3) violates a prohibition prescribed by Subsection (d) or (e) of this section; or

(4) fails to attend at least one-half of the regularly scheduled meetings held each year, excluding meetings held when the person was not a council member.

(g) A member of the council serves a six-year term, with the term expiring September 15.

(h) A member of the council is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the council. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(i) The council shall hold meetings at the call of the chairman. Meetings shall be conducted in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(j) A majority of the council constitutes a quorum for conducting business.

(k) The council shall elect a chairman by a majority vote at the first meeting each year.

**Sec. 34.004. EMPLOYEES.** (a) The executive director shall designate a supervisor and employ sufficient staff with the advice of the advisory council to perform the duties and functions provided by this chapter.

(b) The executive director shall provide necessary services to assist the department in conducting investigations and examinations, holding hearings, and performing other duties and functions under this chapter.

(c) The department shall hear all contested cases as defined in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) arising under this chapter. The department is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

**Sec. 34.005. DEPARTMENT FINANCES.** (a) Money paid to the department under this chapter shall be deposited in the state treasury in a special fund known as the Texas irrigators fund.

(b) The Texas irrigators fund shall be used to pay only expenses approved by the department that are incurred in the administration and enforcement of this chapter.

(c) The executive director shall file annually with the governor and with the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed under this chapter during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

**Sec. 34.006. RULES.** (a) The department shall adopt only those rules consistent with this chapter to govern the conduct of its business and proceedings authorized under this chapter and shall adopt standards governing connections to public or



private water supplies by a licensed irrigator or a licensed installer. The department may adopt standards for landscape irrigation that include water conservation, irrigation system design and installation, and conformance with municipal codes by a licensed irrigator or a licensed installer. The department may not adopt any standard or rule that requires or prohibits the use of any irrigation system, component part, or equipment of any particular brand or manufacturer.

(b) The department does not have authority to amend or enlarge by rule on any provision of this chapter, to change the meaning of this chapter by rule in any manner, to adopt a rule that is contrary to the underlying and fundamental purposes of this chapter, or to make a rule that is unreasonable, arbitrary, capricious, illegal, or unnecessary.

(c) The department may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

(d) The department may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the department a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(e) The department shall develop and implement policies that provide the public with a reasonable opportunity to appear before the department and to speak on any issue under the jurisdiction of the department.

(f) The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the department's programs.

(g) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(h) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each individual regulated under this chapter; or

(3) in a bill for service provided by an individual regulated under this chapter.

(i) The department may recognize, prepare, or administer continuing education programs for landscape irrigation. Participation in the programs is voluntary.

(j) The department may certify instructors and establish standards for instructional course studies designed to prepare applicants for an examination administered by the department. Certification will be voluntary and based on compliance of the instructor with the standards of the department. The department may provide a list containing the names of all department certified instructors and all known uncertified instructors to each applicant for an examination administered by the department.

**Sec. 34.007. REGISTRATION REQUIREMENT.** (a) No person may act as an irrigator or installer unless he or she has a valid certificate of registration under this chapter.

(b) The department shall issue certificates of registration to persons of good moral character who have shown themselves fit, competent, and qualified to act as licensed

irrigators or licensed installers by passing a uniform, reasonable examination which will include the principles of cross connections and safety devices to prevent contamination of potable water supplies.

(c) The department shall provide in its rules for the preparation, administration, and grading of examinations to acquire certificates of registration under this chapter. The fee for taking the examination shall be set by the department not to exceed \$100 for the irrigator certificate of registration and not to exceed \$75 for the installer certificate of registration.

(d) A person holding a certificate of registration under this chapter shall not be required to comply with any other licensing requirements of other state agencies to perform connections to private or public raw or potable water supply systems.

(e) Not later than the 30th day after the day on which a person completes an examination administered by the department, the department shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the department shall send to the person not later than the 30th day after the day on which the request is received by the department an analysis of the person's performance on the examination.

**Sec. 34.008. RECIPROCITY.** (a) The department may certify for registration without examination an applicant who is registered as a licensed irrigator or licensed installer in another state or country that has requirements for registration that are at least substantially equivalent to the requirements of this state and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in this state.

(b) The application for registration under this section shall be accompanied by a fee of not to exceed \$100 for a licensed irrigator or \$75 for a licensed installer as determined by the department.

**Sec. 34.009. RENEWAL.** (a) Certificates of registration expire on August 31 of each year.

(b) The department or the executive director shall notify every person registered under this chapter of the date of expiration of his or her certificate and the amount of the fee that is required for renewal for one year. The notice shall be mailed at least two months in advance of the date of expiration of the certificate.

(c) A person may renew his or her certificate at any time during the months of July and August of each year by payment of the fee adopted by the department in an amount of not more than \$150 for a licensed irrigator or \$100 for a licensed installer.

**Sec. 34.010. ENFORCEMENT.** (a) The department may suspend or revoke a certificate of registration, place on probation a person whose certificate has been suspended, or reprimand a registrant for:

(1) a violation of this chapter or of a rule of the department;

(2) fraud or deceit in obtaining a certificate of registration; or

(3) gross negligence, incompetency, or misconduct while acting as a licensed irrigator or licensed installer.

(b) If the department proposes to suspend or revoke a person's certificate of registration, the person is entitled to a hearing before the department or a hearings officer appointed by the department. The department shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the department.

(c) If a registrant's suspension is probated, the department may require the registrant:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit activities to the areas prescribed by the department; or

(3) to continue or renew professional education until the registrant attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(d) Any person may file a complaint with the department. The complaint must be in writing, must be notarized, and must set forth the facts alleged. One copy must be sent by certified mail to the alleged violator.

(e) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(f) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(g) If the executive director determines through investigation that evidence exists of a violation, the executive director may refer such evidence to the department and may request the setting of a hearing.

(h) The department may compel the attendance of witnesses before it as in civil cases in the district court by issuance of a subpoena.

**Sec. 34.011. ADMINISTRATIVE PENALTY.** (a) If a person licensed or registered under this chapter violates this chapter or a rule or order adopted by the department under this chapter, the department may assess an administrative penalty against the person as provided by this section. Each day a violation continues may be considered a separate violation.

(b) The penalty for each violation shall be set in an amount not to exceed \$1,000.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, duration, and gravity of the prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director determines that a violation has occurred, the executive director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by the consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 14th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged may accept the determination of the executive director made under Subsection (d) of this section, including the recommended penalty, or may make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the executive director, the department shall issue an order approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing and give notice of the hearing to the person charged. The hearing may be before the department or a hearings examiner appoint-

ed by the department. The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the department a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the department by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The executive director shall give notice of the department's order to the person charged. The notice shall include:

- (1) the findings of fact and conclusions of law separately stated;
- (2) the amount of the penalty ordered, if any;
- (3) a statement of the right of the person charged to judicial review of the department's order, if any; and
- (4) other information required by law.

(j) Within the 30-day period immediately following the date on which the department's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

- (1) pay the penalty in full; or
- (2) if the person files a petition for judicial review, contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty:
  - (A) forward the amount of the penalty to the executive director for placement in an escrow account; or
  - (B) in lieu of payment into escrow, post with the executive director a supersedeas bond in a form approved by the executive director for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) If a person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (j)(2) of this section by filing with the executive director an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(l) Failure to forward the money to or to post the bond or file the affidavit with the executive director within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (j)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (j) or (k) of this section, the executive director may forward the matter to the attorney general for enforcement.

(m) Judicial review of the order or decision of the department assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(n) If the penalty is reduced or not assessed by the court, the executive director shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the executive director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the executive director under Subsection (j) of this section and ending on the date the penalty is remitted.

(o) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

**Sec. 34.012. PENALTY; INJUNCTION.** (a) A person who represents himself or herself as a licensed irrigator or licensed installer in this state without being licensed or exempted under this chapter, who presents or attempts to use as his or her own the certificate of registration or the seal of another person who is a licensed irrigator or licensed installer, or who gives false or forged evidence of any kind to the department in obtaining or assisting in obtaining for another a certificate of registration shall be guilty of a Class C misdemeanor. Each day a violation of this subsection occurs constitutes a separate offense.

(b) A person who violates this chapter or a rule or order of the department adopted under this chapter is subject to a civil penalty of not to exceed \$1,000 for each offense. Each day a violation is committed is a separate offense.

(c) An action to recover the penalty under Subsection (b) of this section may be brought by the department in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

(d) The department may enforce this chapter or a valid rule or order of the department by injunction or other appropriate remedy. The action may be brought by the department in a court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

(e) At the request of the department, the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty as provided under Subsection (b) of this section or for injunctive relief or other appropriate remedy, or for both.

**Sec. 34.013. ENFORCEMENT OF ACT.** The executive director with the assistance of the attorney general shall enforce this chapter and the rules adopted by the department.

**Sec. 34.014. LOCAL RULES AND REGULATIONS.** The regulatory authority of any city, town, county, special purpose district, or other political subdivision of the state may require licensed irrigators or licensed installers to comply with any reasonable inspection requirements or ordinances and regulations designed to protect the public water supply and pay any reasonable fees imposed by that local entity relating to work performed by licensed irrigators within its jurisdiction.

**Sec. 34.015. CERTIFICATION OF CERTAIN PERSONS.** A person who held a license as a landscape architect under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes), on August 27, 1979, is entitled to be certified as a licensed irrigator without meeting the requirements of Section 34.007 of this code; however, persons seeking to become licensed installers must comply with Section 34.007 of this code.

**SECTION 1.074.** Sections 50.001(2) and (4), Water Code, are amended to read as follows:

(2) "Commission" means the Texas Natural Resource Conservation [Water] Commission.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation [Water] Commission.

**SECTION 1.075.** Sections 51.001(5) and (6), Water Code, are amended to read as follows:

(5) "Commission" means the Texas Natural Resource Conservation [Water] Commission.

(6) "Executive director" means the executive director of the Texas Natural Resource Conservation [Water] Commission.

**SECTION 1.076.** Sections 52.001(1) and (2), Water Code, are amended to read as follows:

(1) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(2) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.077. Sections 54.001(4) and (5), Water Code, are amended to read as follows:

(4) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(5) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.078. Sections 55.001(3) and (4), Water Code, are amended to read as follows:

(3) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(4) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.079. Sections 57.001(3), (5), and (6), Water Code, are amended to read as follows:

(3) "Water commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(5) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(6) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.080. Section 58.001(5), Water Code, is amended to read as follows:

(5) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.081. Section 64.003(2), Water Code, is amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.082. Sections 65.001(4) and (5), Water Code, are amended to read as follows:

(4) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(5) "Executive director" means the executive director of the Texas *Natural Resource Conservation* [~~Water~~] Commission.

SECTION 1.083. Sections 66.001(2) and (3), Water Code, are amended to read as follows:

(2) "Commission" means the Texas *Natural Resource Conservation* [~~Water~~] Commission.

(3) "Executive director" means the executive director of the Texas *Natural Resource Conservation Commission* [~~commission~~].

SECTION 1.084. Section 1, Article 6673g, Revised Statutes, as added by S.B. No. 352, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 1. RULES. (a) The Commission shall adopt rules providing for environmental reviews of Department transportation projects that are not subject to review under the National Environmental Policy Act (Chapter 55, Title 42, U.S.C.). The Commission shall consider the results of its reviews in executing its duties. The rules must contain provisions for:

(1) public comment, including the types of projects for which public hearings are required, on the Department's environmental reviews;

(2) the Department's evaluation of direct and indirect effects of its projects;

(3) analysis of project alternatives; and

(4) a written report that briefly explains the Department's decision regarding a project and that specifies the mitigation measures to environmental harm on which the project is conditioned.

(b) A rule adopted under Subsection (a)(1) of this section also must provide a procedure for a public hearing to be requested on an environmental review for which a public hearing is not required. An environmental review provided by a rule adopted under this section must be conducted before the location or alignment of the project has been adopted.

(c) *The Department shall coordinate with the Texas Natural Resource Conservation Commission and Texas Parks and Wildlife Department in preparing environmental reviews under this section and shall submit environmental reviews and mitigation proposals prepared by the Department to those agencies for comment before the written report explaining the Department's decision regarding a project is issued. The Texas Natural Resource Conservation Commission and Texas Parks and Wildlife Department shall have at least 30 days to respond prior to issuance of the written report.*

(d) At least once every five years, the Commission shall, after a public hearing, review the existing environmental review rules and make appropriate changes.

SECTION 1.0841. Section 1, Chapter 395, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 1. Before April 1, 2001 [~~1991~~], the Texas Water Commission or the Texas Natural Resource Conservation Commission may not issue a permit under Chapter 26, Water Code, for the discharge of waste or pollutants into or adjacent to Salado Creek, a tributary of the Lampasas River, or any body of water flowing into Salado Creek.

SECTION 1.0842. Section 3(d), Chapter 395, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(d) This Act expires April 1, 2001 [~~1991~~].

SECTION 1.085. On September 1, 1993:

(1) the name of the Texas Water Commission is changed to the Texas Natural Resource Conservation Commission and all powers, duties, rights, and obligations of the Texas Water Commission are the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission;

(2) a member of the Texas Water Commission is a member of the Texas Natural Resource Conservation Commission;

(3) all personnel, equipment, data, documents, facilities, and other items of the Texas Water Commission are transferred to the agency under its new name; and

(4) any appropriation to the Texas Water Commission is automatically an appropriation to the Texas Natural Resource Conservation Commission.

SECTION 1.086. (a) On September 1, 1993, the Texas Air Control Board is abolished. Chapter 325, Government Code (Texas Sunset Act), applies to the abolition of that agency to the extent not inconsistent with this article.

(b) On September 1, 1993:

(1) all powers, duties, rights, and obligations of the Texas Air Control Board are transferred to the Texas Natural Resource Conservation Commission;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Air Control Board are transferred to the Texas Natural Resource Conservation Commission; and

(3) any appropriation to the Texas Air Control Board is automatically transferred to the Texas Natural Resource Conservation Commission.

(c) On September 1, 1993, all programs and personnel of the Texas Air Control Board constitute the air quality program of the Texas Natural Resource Conservation Commis-

sion under the direct authority of the deputy director for air quality. The person serving as executive director of the Texas Air Control Board on August 31, 1993, shall be appointed deputy director for air quality as provided by Section 5.222, Water Code, as amended by this article. The air quality program shall remain intact until at least September 1, 1997, subject to such reorganizations as may be recommended by the studies specified in Section 1.097 of this article, and its employees may be terminated or subject to salary reduction only for cause and only in relation to poor performance or unacceptable conduct.

**SECTION 1.087.** The Texas Natural Resource Conservation Commission is the successor to the Texas Air Control Board and the Texas Water Commission and shall carry out those agencies' respective duties, responsibilities, and functions as provided by law, including Acts of the 72nd Legislature. The rights, powers, and duties delegated by law to the Texas Water Commission and the rights, powers, and duties delegated by law to the Texas Air Control Board are expressly assigned to the Texas Natural Resource Conservation Commission. Any reference in any law or rule to the Texas Air Control Board or to the Texas Water Commission means the Texas Natural Resource Conservation Commission.

**SECTION 1.088.** (a) Effective March 1, 1992:

(1) all powers, duties, rights, and obligations of the Texas Department of Health pertaining to the treatment, handling, storage, and disposal of solid waste; the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water; the regulation of on-site sewage disposal systems; and the administration of on-site wastewater treatment research are transferred to the Texas Water Commission;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health pertaining to solid waste, drinking water, on-site sewage disposal systems, and on-site wastewater treatment research are transferred to the Texas Water Commission; and

(3) all appropriations to the Texas Department of Health pertaining to solid waste, drinking water, on-site sewage disposal systems, and on-site wastewater treatment research are automatically transferred to the Texas Water Commission.

(b) The Texas Water Commission until August 31, 1993, and after that date the Texas Natural Resource Conservation Commission, is the successor to the Texas Department of Health for the administration and enforcement of laws pertaining to the treatment, handling, storage, and disposal of solid waste, the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water, the regulation of on-site sewage disposal systems, the administration of on-site wastewater treatment research, and the disposal of radioactive substances and shall carry out those duties, responsibilities, and functions as provided by law, including Acts of the 72nd Legislature. Except as expressly provided by law, the rights, powers, and duties delegated to the Texas Department of Health for solid waste, drinking water, and disposal of radioactive substances are assigned to the Texas Water Commission until August 31, 1993, and after that date the Texas Natural Resource Conservation Commission.

**SECTION 1.089.** (a) On September 1, 1992, the Texas Water Well Drillers Board and the Texas Board of Irrigators are abolished and the duties, responsibilities, and functions of those boards and all appropriations to those boards are transferred to the Texas Water Commission. The members of the Texas Water Well Drillers Board serving on that date are interim members of the Water Well Drillers Advisory Council until they are appointed to or replaced on that council by the Texas Natural Resource Conservation Commission. The members of the Texas Board of Irrigators serving on that date are interim members of the Texas Irrigators Advisory Council until they are appointed to or replaced on that council by the Texas Natural Resource Conservation Commission.

(b) Chapters 32, 33, and 34, Water Code, as added by this article, take effect September 1, 1992.



(c) The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), The Water Well Pump Installers Act, as added by H.B. No. 1648, Acts of the 72nd Legislature, Regular Session, 1991, and Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), are repealed effective September 1, 1992.

SECTION 1.090. (a) The change in name of the Texas Water Commission, the abolition of the Texas Air Control Board, the transfer of duties from the Texas Department of Health, and the abolition of the Texas Water Well Drillers Board do not affect or impair any act done or obligation, right, license, permit, rule, criterion, standard, or requirement, or penalty accrued or existing under former law, and that law remains in effect for any action concerning such an obligation, right, license, permit, rule, criterion, standard, requirement, or penalty. An action brought or proceeding commenced before the effective date of this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the effective date of this article.

(b) Administrative hearings on applications for permits and prehearing proceedings which had commenced prior to the effective date of this article shall not be delayed or continued as a result of this article or any resulting organizational changes.

SECTION 1.091. Except as otherwise provided by this article, an agency any part of whose duties are transferred by this article to the Texas Natural Resource Conservation Commission shall continue to perform those duties and shall retain its agency name, notwithstanding any change in name to the Texas Natural Resource Conservation Commission in laws amended by this article, until September 1, 1993.

SECTION 1.092. After September 1, 1993, any reference in law to the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health, acting jointly or in consultation with another agency relating to environmental protection duties that are transferred by this article to the Texas Natural Resource Conservation Commission, is a reference to the Texas Natural Resource Conservation Commission acting alone.

SECTION 1.093. Any other state agency not enumerated in this article that has statutory responsibilities for environmental pollution or environmental quality control and that receives a legislative appropriation for those purposes may transfer to the Texas Natural Resource Conservation Commission any amount mutually agreed on by both agencies, subject to the approval of the governor.

SECTION 1.094. The officers and employees of the Texas Department of Health, Texas Water Commission, Texas Air Control Board, and Texas Water Well Drillers Board shall cooperate fully with the reorganization.

SECTION 1.095. The State Purchasing and General Services Commission, to the greatest extent possible, shall locate the offices of the Texas Natural Resource Conservation Commission in a centralized location, taking into account the expiration dates or cancellation clauses of current leases entered into for offices of the agencies abolished and consolidated by this article. The State Purchasing and General Services Commission may not, without the prior written approval of the governor, enter into new leases or extend existing leases for a term beyond September 1, 1993, for the Texas Air Control Board or the Texas Water Commission.

SECTION 1.096. (a) To facilitate the integration of the Texas Water Commission and the Texas Air Control Board into the newly named Texas Natural Resource Conservation Commission, the governor, with the advice and consent of the senate, may appoint a person who holds office as a member of the Texas Air Control Board to fill a vacancy on the Texas Water Commission and may appoint a person who holds office as a member of the Texas Water Commission to fill a vacancy on the Texas Air Control Board. The person appointed holds both offices simultaneously.

(b) A person who is a member of the Texas Water Commission may not receive compensatory per diem for simultaneous service as a member of the Texas Air Control Board.

SECTION 1.097. (a) The Texas Natural Resource Conservation Commission shall appoint an executive director not later than November 1, 1993. Not later than January 1,

1994, the executive director shall appoint the deputy directors under Section 5.222, Water Code, as amended by this article.

(b) In order to ensure a studied and orderly consolidation of functions and activities within the Texas Natural Resource Conservation Commission and to ensure that state efforts to comply with federal mandates, including the federal Clean Air Act Amendments of 1990 (Pub L. No. 101-549), are not disrupted, the integration and consolidation of functions and facilities shall proceed according to the timetable provided by this section.

(c) Not later than March 1, 1994, the executive director shall complete a study and report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the desirability and feasibility of integrating agency support functions inherited from the Texas Air Control Board with the similar functions inherited from the Texas Water Commission. Support functions to be studied are accounting and budgeting systems, personnel services, public information and graphic arts, building grounds and vehicle services, and data processing systems used to support these services. Integration of these functions shall be completed to the extent practicable by September 1, 1994.

(d) Not later than September 1, 1994, the executive director shall report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the costs and benefits of consolidating laboratory functions and on the most cost-effective approach to integrating field offices transferred from the Texas Air Control Board and the Texas Water Commission. The study to be submitted by September 1, 1994, shall include a detailed analysis of the experiences of other states in organizing regional offices for a consolidated environmental agency, recommendations for establishing uniform enforcement policies and procedures within the agency, and an analysis of the most cost-effective structure for organizing and using agency attorneys who perform primarily enforcement functions. Recommendations on reorganization or integration of laboratories, regional offices, enforcement policies, and legal enforcement staff shall be implemented to the extent practicable not later than September 1, 1996.

(e) Not later than January 1, 1995, the executive director shall report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the feasibility and desirability of streamlining permit procedures, including combined permits, consolidated permits, and alternative agency organizational structures that would promote more comprehensive and more expeditious review of proposed facilities. The study shall include a detailed analysis of the experiences of other states in developing streamlined permit procedures or accomplishing multimedia permit reviews, identification of specific problems encountered by permit applicants, identification of types of facilities or projects for which consolidated permits or multimedia review would be most beneficial, and identification of state and federal statutory provisions that impede permit streamlining or multimedia review. Analysis of the costs and benefits of consolidating or integrating regulatory data bases and computer systems transferred from the Texas Air Control Board and the Texas Water Commission shall be included in the study. To the extent practicable any recommendations developed shall be implemented not later than September 1, 1997.

(f) If any reorganization or transfer of responsibilities to another program of the Texas Natural Resource Conservation Commission results in the elimination or downgrading of positions, the percentage of eliminated or downgraded exempt positions and the percentage of eliminated or downgraded classified positions held by former employees of the Texas Air Control Board or the Texas Department of Health may not exceed the percentage those employees represent of the total number of exempt positions or the total number of classified positions within the Texas Natural Resource Conservation Commission at the time of the reorganization.

SECTION 1.0971. In the consolidation of the state's environmental protection agencies, the Texas Natural Resource Conservation Commission shall provide for a reduction goal of at least 20 percent in the administrative work force that administers the state's environmental laws, as compared to the administrative work force administering the same laws in the 1989-1991 fiscal biennium.

SECTION 1.098. (a) Chapter 381, Health and Safety Code, is repealed effective September 1, 1993.

(b) Sections 361.012, 361.070, 361.071, 361.072, 361.073, 361.074, 361.075, 361.076, and 361.077, Health and Safety Code, are repealed effective September 1, 1993.

SECTION 1.099. Nothing in this Act shall be interpreted to limit, remove, or alter the duties of the State Soil and Water Conservation Board regarding nonpoint source pollution.

SECTION 1.0991. The Texas Water Commission and the Texas Air Control Board may adopt rules on an emergency basis, as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), to be effective September 1, 1991, implementing any relevant fee changes provided in this Act or any other legislation enacted by the 72nd Legislature.

## ARTICLE 2. AIR QUALITY REGULATION

SECTION 2.01. Section 382.003, Health and Safety Code, as amended by Section 135, Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) [(2)] "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or [and] enjoyment of animal life, vegetation, or property.

(4) [(3)] "Board" means the Texas Natural Resource Conservation Commission [Air Control Board].

(5) [(4)] "Executive director" means the executive director of the board.

(6) [(5)] "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act (42 U.S.C. Section 7651a) as added by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) *any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).*

(8) [(6)] "Local government" means a health district established under Chapter 121, a county, or a municipality.

(9) [(7)] "Modification of existing facility" means any physical change in, or change in the method of operation of, a stationary source in a manner that increases the amount of any air pollutant emitted by the source into the atmosphere or that results in the emission of any air pollutant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air pollutant emitted *that is authorized by one or more board exemptions*; [or]

(B) *insignificant increases at a permitted facility; or*

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere.

(10) [(8)] "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(11) [(9)] "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(12) [(10)] "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) "Well test" means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

SECTION 2.02. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0172 to read as follows:

*Sec. 382.0172. INTERNATIONAL BORDER AREAS. In order to qualify for the exceptions provided by Section 179B of the federal Clean Air Act (42 U.S.C. Section 7509a), as added by Section 818 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), the board, in developing rules and control programs to be included in an implementation plan for an international border area, shall ensure that the plan or revision:*

(1) *meets all requirements applicable to the plan or revision under Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), other than a requirement that the plan or revision demonstrates attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) or by a regulation adopted under that provision; and*

(2) *would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) or by a regulation adopted under that provision, but for emissions emanating from outside the United States.*

SECTION 2.03. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0205 to read as follows:

*Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the board by rule may control air contaminants as necessary to protect against adverse effects related to:*

(1) *acid deposition;*

(2) *stratospheric changes, including depletion of ozone; and*

(3) *climatic changes, including global warming.*

SECTION 2.04. Sections 382.031(a) and (c), Health and Safety Code, are amended to read as follows:

(a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility ~~[regularly published or with general circulation in each county in which, because of the county's geographic relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by any action taken as a result of the hearing]~~. The notice must be published not less than 30 [20] days before the date set for the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the board not less than 30 [20] days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

SECTION 2.05. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0365 to read as follows:

*Sec. 382.0365. SMALL BUSINESS STATIONARY SOURCE ASSISTANCE PROGRAM. (a) The board shall establish a small business stationary source technical and environmental compliance assistance program.*

*(b) The program shall include:*

*(1) mechanisms to develop, collect, and coordinate information about compliance methods and technologies for small business stationary sources and to encourage cooperation between those sources and other persons to achieve compliance with applicable air quality laws;*

*(2) mechanisms to assist small business stationary sources with pollution prevention and the prevention and detection of accidental releases, including information about alternative technologies, process changes, products, and methods of operation to reduce air pollution;*

*(3) an ombudsman to help small business stationary sources meet the requirements of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);*

*(4) a compliance assistance program to help small business stationary sources identify the requirements for and obtain required permits in a timely and efficient manner;*

*(5) notification procedures to assure that small business stationary sources receive notice of their rights and obligations under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) in time to identify applicable requirements and evaluate and implement appropriate compliance methods;*

*(6) auditing services or referrals for small business stationary source operations to determine compliance with the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549); and*

*(7) procedures for considering a request by a small business stationary source to modify work practices, technological compliance methods, or an implementation schedule requirement that precedes a compliance date, taking into account the technological and financial capability of that source.*

*(c) The program shall include a compliance advisory panel that consists of the following seven members:*

*(1) two members who are not owners or representatives of owners of small business stationary sources, selected by the governor to represent the public;*

*(2) two members who are owners or who represent owners of small business stationary sources, selected by the speaker of the house of representatives;*

*(3) two members who are owners or who represent owners of small business stationary sources, selected by the lieutenant governor; and*

*(4) one member selected by the chairman of the board to represent that agency.*

*(d) The compliance advisory panel shall:*

*(1) give advisory opinions on the effectiveness of the program, the difficulties of implementing the program, and the incidence and severity of enforcement;*

*(2) report periodically to the administrator regarding the program's compliance with requirements of the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511), the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.), and the Equal Access to Justice Act (Pub. L. No. 96-481);*

*(3) review information the program provides to small business stationary sources to assure the information is understandable to nonexperts; and*

*(4) distribute opinions, reports, and information developed by the panel.*

*(e) The board shall enter into a memorandum of understanding with the Texas Department of Commerce to coordinate assistance to any small business in applying for permits from the board.*

*(f) The board may adopt rules reasonably necessary to implement this section in compliance with Section 507 of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and regulations adopted under that Act.*

*(g) In this section:*

*(1) "Program" means the small business stationary source technical and environmental compliance assistance program.*

*(2) "Small business stationary source" has the meaning assigned by Section 507(c) of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).*

SECTION 2.06. Section 382.051, Health and Safety Code, is amended to read as follows:

Sec. 382.051. **PERMITTING AUTHORITY OF BOARD; RULES [CONSTRUCTION PERMIT].** (a) *The board may issue a permit:*

*(1) to construct a new facility or modify an existing facility that may emit air contaminants; or*

*(2) to operate a federal source [Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a construction permit from the board].*

*(b) The board may issue:*

*(1) special permits for certain facilities;*

*(2) a general permit for numerous similar sources; or*

*(3) a single permit for multiple facilities located at the same site.*

*(c) The board may issue a federal operating permit for a source in violation only if the operating permit incorporates a compliance plan for the source, as equipped by Section 503 of the federal Clean Air Act (42 U.S.C. Section 7661b), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and any rules adopted by the board, as a condition of the permit.*

*(d) The board shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter [A person applying for a construction permit or special permit shall submit to the board:*

*[(1) a permit application;*

*[(2) copies of all plans and specifications necessary to determine if the proposed construction will comply with applicable air control standards and the intent of this chapter; and*

*[(3) any other information the board considers necessary.*

~~[(d) The board shall grant within a reasonable time a permit to construct or modify a facility if from the information available to the board or from information presented at a hearing, if a hearing is held under Section 382.056(d), the board finds:~~

~~[(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and~~

~~[(2) no indication that the emissions from the proposed facility will contravene the intent of this chapter, including protection of the public's health and physical property.~~

~~[(e) If the board finds that the emissions from the proposed facility will contravene the standards under Subsection (d) or will contravene the intent of this chapter, the board may not grant the permit or a special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.~~

~~[(f) If the person applying for a permit or a special permit makes the alterations in the person's plans and specifications to meet the board's specific objections, the board shall grant the permit or a special permit. If the person fails or refuses to alter the plans and specifications, the board may not grant the permit or special permit. The board may refuse to accept a person's new application until board objections to the plans previously submitted by that person are rectified.~~

~~[(g) This section does not apply to a person who has executed a contract or begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971. To qualify for an exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972].~~

SECTION 2.07. Section 382.0511, Health and Safety Code, as added by Section 2, Chapter 236, Acts of the 72nd Legislature, Regular Session, 1991, is renumbered as Section 382.0516, Health and Safety Code.

SECTION 2.08. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0511 through 382.0515 and Sections 382.0517 and 382.0518 to read as follows:

*Sec. 382.0511. PERMIT CONSOLIDATION AND AMENDMENT. (a) The board may consolidate into a single permit:*

*(1) any permits, special permits, or exemptions for a facility or source issued by the board before December 1, 1991; or*

*(2) any permit issued by the board on or after December 1, 1991, with any permits, special permits, or exemptions issued or qualified for by that date.*

*(b) Consistent with the rules adopted under Subsection (d) and the limitations of this chapter, including limitations that apply to the modification of an existing facility, the board may amend, revise, or modify a permit.*

*(c) The board may allow changes within a permitted facility or a facility that has filed a timely and complete application for a federal operating permit under Section 382.054 without requiring a permit revision if:*

*(1) the changes are not modifications under any provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);*

*(2) the changes do not cause emissions in excess of emissions allowable under the permit;*

*(3) the changes do not alter any permit condition; and*

*(4) the facility notifies the board in writing at least seven days in advance of the proposed changes, unless the board by rule provides a different time frame for emergencies.*

*(d) The board by rule shall develop criteria and administrative procedures to implement Subsections (b) and (c).*

*(e) When multiple facilities have been consolidated into a single permit under this section and the consolidated permit is reopened for consideration of an amendment relating to one or more facilities authorized by that permit, the permit is not*

considered reopened with respect to facilities for which an amendment, revision, or modification is not sought unless this chapter specifically authorizes or requires that additional reopening in order to protect the public's health and physical property.

**Sec. 382.0512. MODIFICATION OF EXISTING FACILITY.** In determining whether a proposed change at an existing facility is a modification, the board may not consider the effect on emissions of:

- (1) any air pollution control method applied to a source; or
- (2) any decreases in emissions from other sources.

**Sec. 382.0513. PERMIT CONDITIONS.** The board may establish by rule and enforce permit conditions consistent with this chapter and rules adopted by the board.

**Sec. 382.0514. SAMPLING AND MONITORING.** The board may require, at the expense of the permit holder and as a condition of the permit:

- (1) sampling and monitoring of a permitted source or facility; and
- (2) a regular periodic report of sampling and monitoring results.

**Sec. 382.0515. APPLICATION FOR PERMIT.** A person applying for a permit shall submit to the board:

- (1) a permit application;
- (2) copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of this chapter; and
- (3) any other information the board considers necessary.

**Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION OF APPLICATION.** The board shall determine when an application filed under Section 382.054 or Section 382.0518 is administratively complete. On determination, the board by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the board to notify those parties by mail, the board shall notify those parties by publication using the method prescribed by Section 382.031(a).

**Sec. 382.0518. PRECONSTRUCTION PERMIT.** (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit from the board.

(b) The board shall grant within a reasonable time a permit to construct or modify a facility if, from the information available to the board, including information presented at any hearing held under Section 382.056(d), the board finds:

(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the board may consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the board.

(d) If the board finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the board may not grant the permit or a special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit or a special permit makes the alterations in the person's plans and specifications to meet the board's specific objections, the board



shall grant the permit or special permit. If the person fails or refuses to alter the plans and specifications, the board may not grant the permit or special permit. The board may refuse to accept a person's new application until the board's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the board under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by board rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the board.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of Section 382.060, as it existed on November 30, 1991. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

SECTION 2.09. Section 382.054, Health and Safety Code, is amended to read as follows:

Sec. 382.054. *FEDERAL OPERATING PERMIT.* A person may not operate a federal source unless the person has obtained a federal operating permit from the board under Sections 382.0541 and 382.0542 ~~[(a) The person in charge of a facility for which a construction permit has been issued shall apply for an operating permit not later than the 60th day after the date on which the facility begins operation. The board may require the submission of monitoring data to demonstrate compliance with applicable rules and with this chapter in support of an operating permit application. If start-up or testing requires more than 60 days, the board may extend the 60-day period.~~

~~[(b) The board shall issue the operating permit within a reasonable time if:~~

~~[(1) all stipulations of the construction permit are met; and~~

~~[(2) the operation of the facility will not contravene the intent of this chapter or air pollution control standards set by the board.~~

~~[(c) If the board determines that the operation of the facility will contravene the intent of this chapter or air pollution control standards set by the board, the board may not grant the operating permit and shall set out in a report to the applicant the specific objections that the board finds to the facility.~~

~~[(d) The board may not accept a new application from a person for an operating permit for a facility until the previous objections submitted by the board concerning that facility are rectified].~~

SECTION 2.10. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0541 and 382.0542 to read as follows:

Sec. 382.0541. *ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT.* (a) The board may:

(1) require a federal source subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) to comply with that Act and regulations adopted under that Act;

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;

(3) require a new or modified facility or source subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) to use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or source; or

(B) any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412), as amended by Section 301 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), required by the board or by the United States Environmental Protection Agency;

(4) establish maximum achievable control technology requirements on a case-by-case basis if the United States Environmental Protection Agency does not adopt those requirements;

(5) issue initial permits with terms not to exceed five years for federal sources under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), with five-year terms for all subsequently issued or renewed permits;

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g), as amended by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(7) reopen and revise an affected federal permit with a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued; and

(8) incorporate a federal implementation plan as a condition of a permit issued by the board.

(b) The board by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and shall authorize the administrator to revoke and reissue, terminate, or modify a permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the board may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) Subsection (a)(3) does not prohibit the applicability of at least the best available control technology to a new or modified facility or source under Section 382.0518(b)(1).

Sec. 382.0542. **ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY.** (a) The board shall grant a permit required by Section 382.054 not later than 18 months after the date on which the board receives an administratively complete application if, from information available to the board, including information presented at any hearing held under Section 382.0561, the board finds that the facility or source for which the permit is sought meets the requirements of Subsection (b).

(b) A facility or source is eligible for a permit required by Section 382.054 if:

(1) emissions from the facility or source will comply with the intent of this chapter, including protection of the public's health and physical property;

(2) the facility or source will use, at a minimum, any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;

(3) for a new or modified source or facility subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), the source or facility will use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed facility or source; or

(B) any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency; and

(4) emissions from the facility or source will comply with all applicable requirements of:

(A) Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(B) Title IV of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(C) Sections 111 and 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(D) Parts C and D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(E) the state implementation plan requirements approved by the United States Environmental Protection Agency;

(F) this chapter and rules adopted under this chapter; and

(G) the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as revised.

(c) If the board does not act on a permit application or permit renewal application within 18 months of the date on which the board receives an administratively complete application, a person affected by the board's failure to act may obtain judicial review under Section 382.032. A reviewing court may order the board to act on the application without additional delay if it finds that the board's failure to act is arbitrary or unreasonable.

(d) In considering the issuance, amendment, or renewal of a permit, the board may consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the board.

(e) Subsection (b)(3) does not prohibit the applicability of at least the best available control technology to a new or modified facility or source under Section 382.0518(b)(1).

SECTION 2.11. Section 382.055, Health and Safety Code, is amended to read as follows:

Sec. 382.055. REVIEW AND RENEWAL OF [OPERATING] PERMIT. (a) Subject to Section 382.0541(a)(5), a permit issued or renewed by the board on or after December 1, 1991, [An operating permit] is subject to review every five [15] years after the date of issuance to determine whether the authority to operate should be renewed. A permit issued before December 1, 1991, is subject to review 15 years after the date of issuance.

(b) The board by rule shall establish:

(1) a deadline by which the holder of a [an operating] permit must submit an application for review of the permit;

(2) the general requirements that must be met by the applicant; and

(3) the procedures for reviewing and acting on review applications.

(c) Not [No] less than 180 days before [the expiration of the 15th year after] the date on which the renewal application is due [an operating permit is issued or continued under this chapter], the board shall provide written notice to the permit holder, by registered or certified mail, that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a review application and the information to be included in the application.

(d) In determining whether and under which conditions a [an operating] permit should be renewed [continued], the board shall consider, at a minimum:

(1) whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit; [and]

(2) the condition and effectiveness of existing emission control equipment and practices; and

(3) all applicable requirements of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(e) The board shall impose as a condition for *renewal* ~~[continuance]~~ of a ~~[an operating]~~ permit *any applicable requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), as well as those requirements determined to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The* ~~[During the review, the]~~ board may not impose requirements less stringent than those of the existing permit unless the board determines that a proposed change will meet the requirements of *Sections 382.0518 and 382.0541* ~~[Section 382.051]~~.

(f) *In this subsection, a "reasonable time" may not exceed the time limitations established by the United States Environmental Protection Agency for federal sources under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549). The* ~~[No later than 180 days after the date on which the review application is filed, the]~~ board shall *renew* ~~[continue the]~~ permit *within a reasonable time after the date on which a complete application is filed or, if the board determines that the facility will not meet the requirements for renewing* ~~[continuing]~~ the ~~[operating]~~ permit, shall:

- (1) set out in a report to the applicant the basis for the board's determination; and
- (2) establish a schedule, to which the applicant must adhere in meeting the board's requirements, that:

(A) includes a final date for meeting the board's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the board's requirements in accordance with the schedule, the board shall *renew* ~~[continue]~~ the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's ~~[operating]~~ permit is effective until:

- (1) the final date specified by the board's report to the applicant;
- (2) the existing permit is *renewed* ~~[continued]~~; or
- (3) the date specified by a board order issued following a contested case proceeding held under this section.

(h) If the holder of a ~~[an operating]~~ permit to whom the board has mailed notice of this section does not apply for review of that permit by the date specified by the board under this section:

(1) *a* ~~[the]~~ permit *issued on or after December 1, 1991, expires five* ~~[15]~~ years after the date on which the permit is *originally* issued or, if the permit has been *renewed* ~~[continued]~~, *five years after the date on which the permit is last renewed; and*

(2) *a permit issued before December 1, 1991, expires 15 years after the date on which the permit is originally issued or, if the permit has been renewed before December 1, 1991, 15 years after the date on which the permit is last renewed* ~~[continued]~~.

(i) This section does not affect the board's authority to begin enforcement action under Sections 382.082-382.084.

SECTION 2.12. Sections 382.056(a) and (d), Health and Safety Code, are amended to read as follows:

(a) An applicant for a ~~[construction]~~ permit ~~[or special permit]~~ under Section *382.0518 or 382.054* ~~[382.051]~~ or a permit *renewal* review under Section 382.055 shall publish notice of intent to obtain the permit or permit review. The applicant shall publish the notice at least once in a newspaper of general circulation in the *municipality* ~~[county]~~ in which the facility is located or is proposed to be located *or in the municipality nearest to the location or proposed location of the facility.* The board by rule shall prescribe when notice must be published and may require publication of additional notice.

(d) *Except as provided by Section 382.0561, the* ~~[The]~~ board or its delegate shall hold a public hearing on the permit application or permit review application before granting the permit or *renewal* ~~[continuance]~~ if a person who may be affected by the emissions, or a member of the legislature from the general area in which the facility or proposed facility

is located, requests a hearing within the period set by board rule. The board is not required to hold a hearing if the basis of a request by a person who may be affected is determined to be unreasonable.

SECTION 2.13. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0561 through 382.0564 to read as follows:

*Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) The following public hearings shall be conducted under this section only and not under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):*

*(1) a public hearing on a permit application for a federal operating permit under Sections 382.054–382.0542 that is not subject to Section 382.0518; or*

*(2) a public hearing on an application for renewal of a federal operating permit under Section 382.055.*

*(b) On determination that an application for a federal operating permit under Sections 382.054–382.0542 or a renewal of a federal operating permit under Section 382.055 is administratively complete and before the beginning of the public comment period, the board shall prepare a draft permit.*

*(c) The board or its designee shall hold a public hearing on a permit or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The board is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.*

*(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:*

*(1) information submitted by the application, subject to applicable confidentiality laws;*

*(2) the executive director's analysis of the proposed action; and*

*(3) a copy of the draft permit.*

*(e) The board shall hold a public comment period on a permit application or permit renewal application under Sections 382.054–382.0542 or 382.055. Any person may submit a written statement to the board during the public comment period. The executive director shall receive public comment for 30 days after the date on which notice of the public comment period is published. The executive director may extend or reopen the comment period if the director finds an extension or reopening to be appropriate.*

*(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.*

*(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the executive director finds an extension or reopening to be appropriate.*

*(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the executive director's preliminary decision to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.*

*(i) The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.*

*Sec. 382.0562. NOTICE OF DECISION. (a) The executive director shall send notice of a decision on a federal operating permit by first-class mail to the applicant and all persons who comment during the public comment period or at the public hearing.*

*The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.*

*(b) The notice required by Subsection (a) shall:*

*(1) state that any person affected by the decision of the executive director may appeal the decision to the board not later than the 30th day after the date on which notice was mailed;*

*(2) state the date by which an appeal must be filed;*

*(3) explain the appeal process and explain that an appeal is a contested case hearing before the board; and*

*(4) state that a letter to the board stating that the person is appealing the decision constitutes an appeal of the decision.*

*Sec. 382.0563. APPEAL TO BOARD. (a) Any person, including the applicant, affected by a decision of the executive director under Section 382.0561 may appeal the decision to the board not later than the 30th day after the date on which notice was mailed. The issues on appeal must be identified with specificity in the request for a contested case hearing.*

*(b) An appeal under this section is a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

*(c) The filing of an appeal to the board under this section does not affect a permit issued by the executive director. A final order by the board reversing or modifying the executive director's decision takes effect when it becomes final and appealable.*

*Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The board by rule shall allow for notification of and review by the administrator and affected states of any permit application or draft permit prepared under Sections 382.054-382.0542 if notification and review is requested.*

**SECTION 2.14.** Section 382.057, Health and Safety Code, is amended to read as follows:

**Sec. 382.057. EXEMPTION.** *(a) Consistent with Section 382.0511, the [The] board by rule may exempt from the requirements of Section 382.0518 [Sections 382.051-382.055] and Sections 382.054-382.0542 changes within a permitted facility and [Section 382.060] certain types of facilities if it is found on investigation that such changes [facilities] or types of facilities will not make a significant contribution of air contaminants to the atmosphere, except as prohibited by the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549). The board may not exempt any source or facility or any modification of an existing facility defined as "major" under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) or regulations adopted under that Act.*

*(b) The board shall adopt rules specifically defining the terms and conditions for an exemption under this section in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).*

**SECTION 2.15.** Section 382.059, Health and Safety Code, is amended to read as follows:

**Sec. 382.059. REVOCATION OF PERMIT OR EXEMPTION.** *(a) The board may revoke and reissue, terminate, or modify a permit or exemption issued under this chapter if the board determines that:*

*(1) any of the terms of the permit or exemption are being violated; or*

*(2) emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of this chapter.*

*(b) The board may:*

*(1) begin proceedings to revoke and reissue, terminate, or modify a permit if a violation at a [proposed] facility is continued after 180 days following the date on which the notice of violation is provided under Section 382.082; and*

(2) consider good faith efforts to correct the violation in deciding whether to revoke and reissue, terminate, or modify a permit or exemption.

SECTION 2.16. Section 382.061, Health and Safety Code, is amended to read as follows:

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. The board may delegate to the executive director the powers and duties under Sections 382.051-382.055, 382.057, and 382.059[, and 382.060]. An applicant or a person affected by a decision of the executive director may appeal to the board any decision made by the executive director under those sections.

SECTION 2.17. Section 361.071, Health and Safety Code, is amended to read as follows:

Sec. 361.071. PERMIT FROM OTHER AGENCIES. The owner or operator of a hazardous waste or solid waste management facility is not required to obtain a permit from any agency of the state other than the [department or] commission to store, process, treat, dispose of, or destroy solid waste or hazardous waste unless:

(1) a permit is required under *Title IV or V* [the new source review requirements of Part C or D, Title I,] of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) [(42 U.S.C. Section 7401 et seq.) for a major source or a major modification]; or

(2) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code.

SECTION 2.18. Section 382.062, Health and Safety Code, is amended to read as follows:

Sec. 382.062. APPLICATION AND INSPECTION FEES. (a) The board shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or[,] permit amendment, [or] revision, or *modification not subject to Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)* [special permit submitted under Section 382.051];

(B) a renewal [registration submitted under Section 382.060; and

[(C) a permit] review of a permit issued under Section 382.0518 not subject to *Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)* [382.055]; [and]

(2) inspections of a facility or source performed to enforce this chapter or rules adopted by the board under this chapter until the facility or source is required to obtain a *Title IV or V operating permit under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)*; and

(3) inspections performed to enforce this chapter or rules adopted by the board under this chapter at a facility or source not required to obtain a *Title IV or V operating permit under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549)*.

(b) The board may adopt rules relating to charging and collecting a fee for an exemption from a [construction] permit authorized by board rule and for a variance.

(c) For purposes of the fees, the board shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than \$25 [\$50] or more than \$75,000 [\$50,000].

(e) The board by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

- (1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and
- (2) not less than 50 percent of the board's actual annual expenditures to:
  - (A) review and act on permits or special permits;
  - (B) amend and review permits;
  - (C) inspect permitted, exempted, and specially permitted~~[, and registered]~~ facilities; and
  - (D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, *excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).*

SECTION 2.19. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.0621 to read as follows:

*Sec. 382.0621. OPERATING PERMIT FEE. (a) The board shall adopt, charge, and collect an annual fee based on emissions for each source that either:*

- (1) is subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549); or*
- (2) is based on plant operations, and the rate of emissions at the time the fee is due would be subject to the permitting requirements if the requirements were in effect on that date.*

*(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), including the reasonable costs of:*

- (1) reviewing and acting on any application for a Title IV or V permit;*
- (2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;*
- (3) emissions and ambient monitoring;*
- (4) preparing generally applicable regulations or guidance;*
- (5) modeling, analyses, and demonstrations; and*
- (6) preparing inventories and tracking emissions.*

*(c) The board by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 1989. For purposes of this subsection:*

- (1) the consumer price index for any calendar year is the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year; and*
- (2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall be used.*

*(d) The board may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) in excess of 4,000 tons per year from any source.*

*(e) This section does not restrict the authority of the board under Section 382.062 to impose fees on sources not subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).*

SECTION 2.20. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.0622 to read as follows:

*Sec. 382.0622. CLEAN AIR ACT FEES. (a) Clean Air Act fees consist of:*



(1) fees collected by the board under Sections 382.062, 382.0621, and 382.097 and as otherwise provided by law; and

(2) \$2 of each advance payment collected by the Department of Public Safety for inspection certificates for vehicles other than mopeds under Section 141(c), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(b) Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air fund and shall be used to safeguard the air resources of the state. All unexpended and unobligated money remaining in the fund on the last day of each fiscal biennium shall be transferred to the credit of the general revenue fund.

(c) The board shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), fees collected under Section 382.0621(a) may be appropriated only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the board may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (42 U.S.C. Section 7405) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549); and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The board may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The board is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the board deems an effective means of addressing federal and state requirements. The services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The board and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

SECTION 2.201. Section 382.083, Health and Safety Code, is amended to read as follows:

Sec. 382.088. EMERGENCY SUIT. If an apparent violation or threat of violation of ~~an [this chapter or a rule or]~~ order of the board would materially affect human health and safety, a suit under Section 382.082 shall be immediately instituted.

SECTION 2.21. Section 382.091, Health and Safety Code, is amended to read as follows:

Sec. 382.091. ~~CRIMINAL OFFENSES [UNAUTHORIZED EMISSIONS PROHIBITED; CRIMINAL PENALTY]~~. (a) A person commits an offense if the person:

(1) intentionally or knowingly, with respect to the person's conduct, violates:

(A) Section 382.0518(a);

(B) Section 382.054;

(C) Section 382.056(a);

(D) Section 382.058(a); or

(E) an order, permit, rule, or exemption issued under this chapter;

(2) intentionally or knowingly fails to pay a fee required by this chapter or by a rule adopted or order issued under this chapter;

(3) intentionally or knowingly makes or causes to be made any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or does not file or maintain any notice, application, record, report, plan, or other document required to be filed or maintained by this chapter or by a rule adopted or permit or order issued under this chapter;

(4) intentionally or knowingly fails to notify or report to the board as required by this chapter or by a rule adopted or permit or order issued under this chapter;

(5) intentionally or knowingly tampers with, modifies, disables, or fails to use a required monitoring device; tampers with, modifies, or disables a monitoring device; or falsifies, fabricates, or omits data from a monitoring device, unless done in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board;

(6) recklessly, with respect to the person's conduct, emits an air contaminant that places any other person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board; or

(7) intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing any other person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board.

(b) Each day a violation under this section occurs is a separate offense.

(c) In this section, "serious bodily injury" has the meaning assigned by Section 1.07, Penal Code ~~[may not cause or permit the emission of an air contaminant that causes or that will cause air pollution unless the emission is made in compliance with a variance or other order issued by the board]~~.

~~[(b) A person commits an offense if the person violates this section. An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$1,000.]~~

~~[(c) Each day a violation occurs is a separate offense.]~~

~~[(d) Venue for prosecution of an alleged violation is in the county in which the violation is alleged to have occurred.]~~

~~[(e) In this section, "person" means an individual or a private corporation.]~~

SECTION 2.22. Subchapter D, Chapter 382, Health and Safety Code, is amended by adding Sections 382.092 through 382.095 to read as follows:

Sec. 382.092. CRIMINAL PENALTIES. (a) An offense under Section 382.091(a)(1) is punishable for an individual by a fine of not more than \$50,000 or less than \$1,000,

confinement in jail not to exceed 180 days, or both fine and confinement and, for a corporation or association, by a fine of not more than \$100,000 or less than \$1,000.

(b) An offense under Section 382.091(a)(2) is punishable for an individual by a fine of not more than twice the amount of the required fee, confinement in jail not to exceed 90 days, or both fine and confinement and, for a corporation or association, by a fine of not more than twice the amount of the required fee.

(c) An offense under Sections 382.091(a)(3)–(5) is punishable for an individual by a fine of not more than \$100,000 or less than \$500, confinement in jail not to exceed one year, or both fine and confinement and, for a corporation or association, by a fine of not more than \$250,000 or less than \$1,000.

(d) An offense under Section 382.091(a)(6) is punishable for an individual by a fine of not more than \$100,000 or less than \$1,000, confinement in jail not to exceed one year, or both fine and confinement and, for a corporation or association, by a fine of not more than \$250,000 or less than \$2,500.

(e) An offense under Section 382.091(a)(7) is punishable for an individual by a fine of not more than \$150,000 or less than \$1,500, confinement in the institutional division of the Texas Department of Criminal Justice not to exceed five years, or both fine and confinement and, for a corporation or association, by a fine of not more than \$300,000 or less than \$3,000.

(f) An offense under Section 382.091(a)(8) is punishable for an individual by a fine of not more than \$250,000 or less than \$2,500, confinement in the institutional division of the Texas Department of Criminal Justice not to exceed 10 years, or both fine and confinement and, for a corporation or association, by a fine of not more than \$500,000 or less than \$5,000.

(g) If it is shown at the trial of a defendant that the defendant has previously been convicted of an offense under this section, the maximum punishment may be doubled with respect to both the fine and imprisonment.

(h) In this section, "corporation" and "association" have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.

**Sec. 382.093. PROOF OF KNOWLEDGE.** In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

**Sec. 382.094. AFFIRMATIVE DEFENSES.** It is an affirmative defense to prosecution under this chapter that:

(1) the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession or medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent; or

(2) the person charged was an employee who was carrying out the employee's normal activities and was acting under orders from his employer, unless the person charged engaged in knowing and intentional violations.

**Sec. 382.095. ASSISTANCE IN PROSECUTION BY ATTORNEY GENERAL.** (a) The board or the executive director shall consult with the attorney general concerning possible criminal prosecution of an alleged violation. At the specific request of the board or the executive director, the attorney general may institute the procedures established by Subsection (b).

(b) The attorney general, after evaluating the case, may:

(1) notify the prosecuting attorney in the county in which the violation allegedly occurred; and

(2) offer the investigative, technical, and litigation assistance of the attorney general's office in any prosecution of the alleged violation brought by the prosecuting attorney.

(c) The attorney general may establish a section within the attorney general's office to provide the investigative, technical, and litigation assistance authorized by this section.

SECTION 2.23. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.096 to read as follows:

*Sec. 382.096. PUBLIC PARTICIPATION. Before the board approves a consent order or settlement agreement settling a civil or administrative enforcement action under this chapter to which the State of Texas or the board is a party or before the court signs a judgment or other agreement settling a judicial enforcement action other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), the board or the attorney general, as appropriate, shall permit the public to comment in writing on the proposed order, judgment, or other agreement. Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes. The board or the attorney general, as appropriate, shall promptly consider any written comments and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. No further notice of changes to the proposed order, judgment, or other agreement must be published if those changes arise from comments submitted in response to a previous notice. This section does not apply to criminal enforcement proceedings.*

SECTION 2.24. Sections 382.019(b) and (d), Health and Safety Code, are amended to read as follows:

(b)(1) *The board shall conduct a study and evaluation to determine the appropriateness of adopting and implementing motor vehicle emission standards and the compliance program of the State of California, taking into consideration the fact that said program is still under development. In conducting the study and evaluation, the board shall at a minimum make a determination of the following:*

*(A) whether adoption of the State of California motor vehicle emissions standards and compliance program will result in net air quality benefits, using appropriate air quality modeling analysis and considering both volatile organic compound and nitrogen oxide emissions and their impact on ambient ozone levels;*

*(B) whether the state will receive emissions credits in the state implementation plans for ozone nonattainment areas for adopting and implementing the State of California motor vehicle emissions standards and compliance program;*

*(C) whether the board can selectively apply the State of California motor vehicle emissions standards to only light duty vehicles;*

*(D) whether the board can discontinue at any time the State of California motor vehicle emissions program if it determines that a continuation of the program is not in the state's best interest;*

*(E) whether the board can obtain United States Environmental Protection Agency approval of the state motor vehicle emissions program under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) without having to establish and implement a pre-sale certification and vehicle emissions testing program or a recall enforcement testing program;*

*(F) whether the board can obtain United States Environmental Protection Agency approval of the state motor vehicle emissions program under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) without being required to mandate the use or sale of any specific fuel or fuel content;*

*(G) the cost of implementing the State of California motor vehicle emissions program within areas of this state;*

*(H) whether the implementation of the State of California motor vehicle emissions program will cause an unreasonable burden on the motor vehicle manufacturers and the fuel suppliers considering technical and distribution practicability and economic reasonableness; and*

*(I) whether adoption of the State of California motor vehicle emission standards and compliance program will result in a more cost-effective reduction in ozone precursors than the federal motor vehicle standards and compliance program or than other options that could be pursued.*

*(2) The board shall report the findings of its study and evaluation to the 73rd Legislature. [A rule adopted under this section must be consistent with any federal law relating to the control of emissions from the vehicles covered.]*

*(d) The board or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.), except the board may adopt rules requiring such vapor recovery systems installed in nonattainment areas if it can be demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Texas Department of Health, it is determined to be necessary for the protection of public health.*

SECTION 2.25. Section 382.037, Health and Safety Code, is amended to read as follows:

Sec. 382.037. **[MOTOR] VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM [FOR HARRIS COUNTY].** (a) *The board by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), in accordance with this section and rules adopted under this section. The board by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).*

*(b) The board by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.*

*(c) If the program is established under this section, the board:*

*(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulations; and*

*(2) may adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.*

*(d) A program initiated under this section may not include registration-based enforcement unless the State Department of Highways and Public Transportation elects to include the program in its registration enforcement system.*

*(e) On adoption of a resolution by the board and after proper notice, the State Department of Highways and Public Transportation shall implement a system that requires, as a condition of registering a vehicle under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes), in a county that is included in a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), that the owner of the vehicle hold a valid vehicle emissions inspection certificate issued for the vehicle under that*

Act within the 12 months preceding the application for registration. The State Department of Highways and Public Transportation shall implement such a system when it is required by any provision of federal or state law, including any provision of the Texas air quality state implementation plan. The board may require or accept verification of compliance other than a vehicle inspection certificate. The alternative verification of compliance shall be in a form determined through joint rule making by the board and the State Department of Highways and Public Transportation.

(f) The board may assess fees for vehicle emissions-related inspections performed at inspection or reinspection facilities authorized and licensed by the board in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by board rule may be retained by the station owner or operator to recover the cost of performing the inspections and provide a reasonable margin of profit. Any portion of the fee collected by the board is a Clean Air Act fee under Section 382.0622.

(g) The board shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by board rule, or both and shall implement that inspection program if the board determines the program would minimize emissions. For purposes of this subsection, a diesel engine not used in a vehicle registered for use on public highways is not a diesel vehicle.

(h) The board may not establish vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels other than those standards promulgated by the United States Environmental Protection Agency unless specifically authorized by the legislature or unless it is demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Texas Department of Health, it is determined to be necessary for the protection of public health~~[with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation, shall develop a program of motor vehicle inspections and maintenance in Harris County].~~

~~[(b) The board shall cooperate with any legislative committee appointed to monitor the progress made in satisfying this section].~~

SECTION 2.26. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.038 and 382.039 to read as follows:

**Sec. 382.038. INSPECTION STATIONS; QUALITY CONTROL AUDITS.** (a) The board by rule shall adopt standards and procedures for establishing vehicle emissions inspection stations authorized and licensed by the state.

(b) A vehicle emissions inspection may be performed at a decentralized independent inspection station or at a centralized inspection facility operated or licensed by the state. In developing the program for vehicle emissions inspections, the board shall make all reasonable efforts to preserve the present decentralized system.

(c) After consultation with the State Department of Highways and Public Transportation, the board shall require state and local transportation planning entities designated by the board to prepare long-term projections of the combined impact of significant planned transportation system changes on emissions and air quality. The projections shall be prepared using air pollution estimation methodologies established jointly by the board and the State Department of Highways and Public Transportation. This subsection does not restrict the State Department of Highways and Public Transportation's function as the transportation planning body for the state or its role in identifying and initiating specific transportation-related projects in the state.

(d) The board may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as

*necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.*

*(e) The board and the Department of Public Safety shall develop a challenge station program to ensure quality control of a vehicle emissions inspection and maintenance system.*

*Sec. 382.039. ATTAINMENT PROGRAM. (a) The board shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.*

*(b) Participating agencies include the State Department of Highways and Public Transportation and metropolitan planning organizations designated by the governor.*

SECTION 2.27. Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (i) to read as follows:

*(i) In implementing each system that requires a valid vehicle emissions inspection certificate as a condition of registering a vehicle in a county that is included in a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), the State Department of Highways and Public Transportation through the county tax collector in the county may not issue a registration for a vehicle unless the vehicle emissions inspection certificate for that vehicle or other verification of compliance, as provided by Section 382.037(e), Health and Safety Code, is submitted with the application for registration or renewal of registration.*

SECTION 2.28. Section 3, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-3, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

*(j) In implementing each system that requires a valid vehicle emissions inspection certificate as a condition of registering a vehicle in a county that is included in a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), the State Department of Highways and Public Transportation shall require that the vehicle emissions inspection certificate for that vehicle or other verification of compliance, as provided by Section 382.037(e), Health and Safety Code, be submitted with an application for registration or renewal of registration.*

SECTION 2.29. Section 140, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsections (b-1) and (b-2) and amending Subsection (c) to read as follows:

*(b-1) Notwithstanding Subsection (b) of this section, if an emissions-related inspection under Section 142(d) or (d-1) of this Act discloses the necessity for adjustments, corrections, or repairs, the Texas Natural Resource Conservation Commission by rule may require that the vehicle be reinspected at a specified inspection station authorized and licensed by the Texas Natural Resource Conservation Commission to ensure that the proper emissions-related adjustments, corrections, or repairs have been made.*

*(b-2) Notwithstanding the other provisions of this section or other law and unless prohibited by the United States Environmental Protection Agency, a person who holds a dealer's general distinguishing number issued pursuant to Article 6686, Revised Statutes, and who is authorized to perform emissions-related inspections may:*

*(1) with respect to a vehicle held by the person for sale, including a vehicle on which the person has conducted an emissions-related inspection, perform the repairs necessary to bring the vehicle into compliance with applicable emissions-related inspection requirements, reinspect the vehicle, and issue an emissions-related inspection certificate for that vehicle; and*

*(2) perform an emissions-related inspection on a vehicle with respect to which the person is authorized to perform warranty work pursuant to a manufacturer's warranty, perform the repairs necessary to bring the vehicle into compliance with applicable emissions-related inspection requirements, reinspect the vehicle, and issue an emissions-related inspection certificate for the vehicle.*

(c) Official inspection stations appointed and supervised by the State of Texas shall make all inspections pursuant to the provisions of this Section, except as provided in subdivision (d) hereof. The Department shall cause one (1) inspection to be made in the year commencing with the effective date of this Act, and annually thereafter. If the motor vehicle, trailer, semi-trailer, pole trailer or mobile home, registered in this State, is damaged to the apparent extent that it would require repair before passing state inspection, the investigating officer shall remove the inspection certificate from the vehicle windshield and shall give the operator of the vehicle a dated receipt. Within thirty (30) days of the date indicated on the receipt, the vehicle shall be reinspected. The periods of inspection shall be fixed by the Department, provided, however, that at no time, except as provided in Section 142A of this Act or as may be provided under Section 382.037, Health and Safety Code, shall a certificate of inspection or a receipt for a certificate of inspection be required or demanded as a condition precedent to securing a license plate for any motor vehicle, regardless of any period or periods of inspection as may be fixed by the Department. The Department shall have power to make rules and regulations, not inconsistent with law, with respect to the periods of inspection. *This subsection does not affect the authority of the Texas Natural Resource Conservation Commission under Section 382.037, Health and Safety Code, to require a valid vehicle emissions inspection certificate as a condition of registering a vehicle under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes).*

SECTION 2.30. Section 141, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsection (a-1) and amending Subsection (c) to read as follows:

*(a-1) The Texas Natural Resource Conservation Commission may authorize and license inspection stations as necessary to conduct the emissions-related reinspection requirements of the vehicle emissions inspection and maintenance program under Sections 142(d) and (d-1) of this Act. At the request of the Texas Natural Resource Conservation Commission, the Department shall provide inspection certificates for distribution and issuance at centralized reinspection stations licensed by the Texas Natural Resource Conservation Commission. The Texas Natural Resource Conservation Commission shall pay to the Department an amount equal to the cost of producing the certificates. The Texas Natural Resource Conservation Commission shall establish a reinspection fee and shall implement procedures governing tracking of certificates and refunding the cost of unused certificates issued to reinspection facilities.*

(c) The fee for compulsory inspection of a motor vehicle other than a moped, to be made under this Section, shall be *Ten [Eight] Dollars and Fifty Cents (\$10.50) [(\$8.50)]*. The fee for compulsory inspection of a moped, to be made under this Section, shall be *Five Dollars and Seventy-five Cents (\$5.75). Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)]* of each fee shall be paid to the Department and shall, except as provided by Section 815.405, Government Code, or Section 382.0622, Health and Safety Code *[25.405, Title 110B, Revised Statutes]*, be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law. The Department may require each official inspection station to make an advance payment of *Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)]* for each inspection certificate furnished to it, and the money so received shall, except as provided by Section 815.405, Government Code *[25.405, Title 110B, Revised Statutes]*, be placed in the Motor Vehicle Inspection Fund, and no further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of *Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)]* for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department. *The Texas Natural Resource*



*Conservation Commission shall refund to the Department Two Dollars (\$2.00) for each unused certificate returned to the Department by inspection stations licensed by the Department. An inspection station may waive the fee otherwise due from the owner of a vehicle inspected under this Section if the inspection station has rendered in advance to the Department the payment of Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)] for the certificate applied to a vehicle with respect to which the owner's fee has been so waived.*

SECTION 2.31. Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by amending Subsection (d), adding Subsection (d-1), and amending Subsections (e) and (h) to read as follows:

(d) The Public Safety Commission shall establish a ~~[parameter]~~ motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state ~~[which does not meet National Ambient Air Quality Standards and]~~ for which the Texas Natural Resource Conservation Commission ~~[Air Control Board]~~ has adopted a resolution requesting the department to institute such a program *and which satisfies one of the following conditions:*

*(1) the county does not meet the national ambient air quality standards for ozone, carbon monoxide, or another vehicle-related pollutant; or*

*(2) the vehicle emissions inspection and maintenance program is required by any provision of federal law, including any provision of the Texas air quality state implementation plan. [The commission may establish a parameter or any other motor vehicle emissions inspection and maintenance program for any area in the state as required under federal law.]*

*(d-1) The Public Safety Commission may establish a motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state for which the Texas Natural Resource Conservation Commission has adopted a resolution requesting the Department to institute such a program and for which the affected county and the most populous municipality in the county, according to the most recent federal decennial census, by resolution have formally requested a proactive air quality plan consisting of a vehicle emissions inspection and maintenance program. A program initiated under this subsection may not include registration-based enforcement unless the State Department of Highways and Public Transportation elects to include the program in its registration enforcement system.*

(e) The Public Safety Commission shall adopt standards for *emissions-related* inspection criteria *consistent with Texas Natural Resource Conservation Commission and federal requirements* applicable to a county in which such a program, pursuant to Subsections ~~[Subsection]~~ (d) and (d-1) of this section, is established.

(h) A motor vehicle emissions inspection and maintenance program instituted under this Act shall be terminated upon receipt of a request consisting of a resolution adopted by the Texas Natural Resource Conservation Commission ~~[discontinuation of federal requirements for such action].~~

SECTION 2.32. Article 6701m-1, Revised Statutes, is amended to read as follows:

Art. 6701m-1. INSCRIPTION ON STATE VEHICLE. There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas the word "Texas," followed in letters of not less than two (2) inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00). Provided, however, State-owned vehicles under control and custody of the State Board of Pharmacy, Texas Department of Mental Health and Mental Retardation, the Department of Public Safety, the Texas Department of Corrections, the Board of Pardons and Paroles, the Parks and Wildlife Department, the

Railroad Commission of Texas, the Texas Alcoholic Beverage Commission, the office of the attorney general's Health Services Providers Integrity and Medicaid Fraud Division, The Banking Department of Texas, the Savings and Loan Department of Texas, the Texas Juvenile Probation Commission, *the Texas Air Control Board, the Texas Natural Resource Conservation Commission*, Agencies and Branches of Government for whom appropriations are made under the article of the General Appropriations Act that appropriates money to the legislature, and the Texas Youth Council may be exempt from the requirements of this Act by rule and regulation of the governing bodies of these State agencies or, in the case of the office of the attorney general, by rules and regulations of the attorney general. Such rules and regulations shall specify the primary use to which vehicles exempt from the requirements of this Act are devoted, the purpose to be served by not printing on them the inscriptions required by this Act and such rules and regulations shall not be effective until filed with the Secretary of State. No use of vehicles exempt from the requirements of this Act shall be made except for the legitimate purposes expressly specified in the rules and regulations. If a use not specified in the rules and regulations is made of the exempt vehicles, the penalties prescribed in this Act apply to that use. Whoever drives a vehicle exempted from the requirements of this Act as authorized by this provision shall not be subject to the penalties prescribed in this Act.

SECTION 2.33. Section 382.017, Health and Safety Code, as amended by Section 137, Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 382.017. RULES. (a) The board may adopt rules. The board shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the board's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the board's action shall be sent by mail written notice of the board's action.

(d) *Subsections (a) and (b) notwithstanding, the board may adopt rules consistent with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), if the board determines that the need for expeditious adoption of proposed rules requires use of those procedures.*

(e) The terms and provisions of a rule adopted by the board may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the board shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the board shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) ~~[(e)]~~ Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the board by rule may not specify:

(1) a particular method to be used to control or abate air pollution;

(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

**SECTION 2.34.** Section 382.060, Health and Safety Code, and Subsection (c-1), Section 141, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), are repealed.

**SECTION 2.35.** Sections 382.0541, 382.0542, and 382.0561 through 382.0563, Health and Safety Code, as added by this article, and the federal operating permit requirement described by Section 382.054, Health and Safety Code, as amended by this article, take effect on the date on which the executive director of the Texas Natural Resource Conservation Commission publishes in the Texas Register notice of approval of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) by the Administrator of the United States Environmental Protection Agency.

**SECTION 2.36.** (a) A person who holds a construction permit under Section 382.051, Health and Safety Code, as it existed before the effective date of this article, and whose application for an operating permit under Section 382.054, Health and Safety Code, as it existed before the effective date of this article, is pending on December 1, 1991, may operate the facility or source for which the permit was issued as provided by Section 382.0511, Health and Safety Code, as added by this article, subject to the permitting and review and renewal requirements of Sections 382.054 and 382.055, Health and Safety Code, as amended by this article.

(b) Any person required to obtain a federal operating permit under Section 382.054, Health and Safety Code, as amended by this article, who has commenced construction on or operated a facility or source for which that permit is required under a permit, special permit, exemption, or other authorization issued or applicable under Sections 361.061, 382.051, 382.054, 382.055, or 382.057, Health and Safety Code, as they existed before the effective date of this article, or under Sections 382.0511 and 382.0518, Health and Safety Code, as added by this article, and any regulations issued under those sections, may continue constructing or operating the facility or source for which the federal operating permit is required under the permit, special permit, exemption, or other authorization, subject to any applicable permit review and renewal requirement of Section 382.055, Health and Safety Code, as amended by this article, during the time between the date on which the permit requirement of Section 382.054, Health and Safety Code, as amended by this article, takes effect and the date on which the person obtains the required federal operating permit if the person timely files an application for a federal operating permit.

(c) An application for a federal operating permit required by Section 382.054, Health and Safety Code, as amended by this article, must be submitted to the Texas Natural Resource Conservation Commission not later than the latter of:

(1) one year after the date on which the executive director of the Texas Natural Resource Conservation Commission publishes in the Texas Register notice of approval of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) by the Administrator of the United States Environmental Protection Agency; or

(2) one year after the date on which the facility or source for which a permit is required becomes subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

**SECTION 2.37.** Not later than November 15, 1992, the Texas Natural Resource Conservation Commission shall submit to the Administrator of the United States Environmental Protection Agency the commission's plan for a small business stationary source technical and environmental compliance assistance program as required by Section 507 of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

**SECTION 2.38.** Not later than March 1, 1992, the Texas Natural Resource Conservation Commission shall adopt rules necessary to collect and administer the fees imposed under Section 382.0621, Health and Safety Code, as added by this article.

**SECTION 2.39.** (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an

offense is committed before the effective date of this article if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 2.391. Until September 1, 1993, a reference in this article or other law relating to air quality to the Texas Natural Resource Conservation Commission is a reference to the Texas Air Control Board.

### ARTICLE 3. ACQUISITION OF STATE-OWNED NATURAL GAS BY STATE AGENCIES AND SCHOOL DISTRICTS

SECTION 3.01. Chapter 31, Natural Resources Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. USE OF STATE ENERGY RESOURCES

*Sec. 31.401. NATURAL GAS ACQUISITION CONTRACTS. (a) The land office shall review and must approve any contract entered into by a state agency for the acquisition of an annual average of 100 MCF per day or more of natural gas used in the production of energy.*

*(b) Before approving a contract described by Subsection (a) of this section, the land office shall ensure that the agency, to meet its energy requirements, is using, to the greatest extent practical, natural gas produced from land leased from:*

*(1) the school land board;*

*(2) a board for lease other than the Board for Lease of University Lands; or*

*(3) the surface owner of Relinquishment Act land.*

*(c) In this section, "state agency" has the meaning assigned by Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).*

*Sec. 31.402. RULES. The commissioner shall adopt any rules necessary to carry out this subchapter, including rules regarding review and approval of natural gas acquisition contracts under Section 31.401 of this code.*

### ARTICLE 4. REGULATORY ASSESSMENTS

SECTION 4.01. Section 5.235, Water Code, is amended by adding Subsection (n) to read as follows:

*(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:*

*(A) A public utility as defined in Section 13.002 of this code shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.*

*(B) A water supply or sewer service corporation as defined in Section 13.002 of this code shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.*

*(C) A district as defined in Section 50.001 of this code that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.*

*(2) The regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.*

*(3) The commission shall use the assessments collected from districts solely to pay costs and expenses incurred by the commission in the regulation of districts.*

*(4) The commission shall use the assessments collected from water supply or sewer service corporations solely to pay costs and expenses incurred by the commission in the regulation of water supply or sewer service corporations.*

*(5) The commission shall use the assessments collected from public utilities solely to pay costs and expenses incurred by the commission in the regulation of public utilities.*

*(6) The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.*

*(7) Except as provided by Paragraph (A) of this subdivision, assessments collected from retail customers for the prior 12 months are due on January 15 of each year. The executive director shall collect all assessments from the utility service providers, and those funds shall be paid into the state treasury and credited to the water utility fund.*

*(A) A utility service provider may make quarterly payments due on January 15, April 15, July 15, and October 15 of each year. If payments are made quarterly and received by the commission not later than the 30th day after the due date, the utility service provider may retain an administrative fee equal to 10 percent of the amount due for costs incurred in collecting and remitting the assessment.*

*(B) The commission shall assess on a utility service provider a penalty equal to 10 percent of the amount due for any payment received after January 31. Funds delinquent for more than 30 days shall draw interest at the rate of 10 percent a year on the assessment and penalty due.*

*(C) The commission shall assess a penalty against a municipality with a population of more than 1.5 million that does not provide municipal water and sewer services in an annexed area on or before 4½ years after the annexation takes effect in accordance with Section 43.056, Local Government Code. A penalty assessed under this paragraph shall be not more than \$1,000 for each day the services are not provided after 4½ years after the annexation. A penalty collected under this paragraph shall be deposited into a special fund in the state treasury to be used to provide water and sewer service to residents of the city.*

*(8) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.*

SECTION 4.011. Section 43.056(l), Local Government Code, is repealed.

SECTION 4.02. Section 13.041, Water Code, is amended by adding Subsection (g) to read as follows:

*(g) The regulatory assessment required by Section 5.235(n) of this code is not a rate and is not reviewable by the commission under Section 13.043 of this code. The commission has the authority to enforce payment and collection of the regulatory assessment.*

SECTION 4.03. Section 13.187(a), Water Code, is amended to read as follows:

*(a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 30 days before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include the information required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules. When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that*

supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported expenses. If the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the commission *or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.235(n) of this code.*

SECTION 4.04. Section 13.453, Water Code, is amended to read as follows:

Sec. 13.453. COLLECTION AND PAYMENT INTO GENERAL REVENUE FUND. ~~[(a)] All fees[, penalties, and interest] paid under Sections [13.451, 13.452,] 13.4521[, and 13.4522 of this code shall be collected by the executive director [comptroller of public accounts] and paid into the General Revenue Fund. [The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 13.451 of this code when made.~~

~~[(b) Chapters 111, 112, and 113, Tax Code, apply to the administration, collection, and enforcement of the assessment imposed under this code except as modified by this code.]~~

SECTION 4.05. Sections 13.451 and 13.452, Water Code, are repealed.

#### ARTICLE 5. COSTS ASSOCIATED WITH DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

SECTION 5.01. Section 402.272, Health and Safety Code, is amended to read as follows:

Sec. 402.272. WASTE DISPOSAL FEES. (a) The board shall have collected a waste disposal fee to be paid by each person who delivers low-level waste to the authority for disposal. *Additionally, the board shall collect a low-level radioactive waste planning and implementation fee. These fees shall as closely as possible allow the board to reimburse itself for the present costs of administering, implementing, and planning the activities authorized by this chapter and to reimburse the general revenue fund for the expenses incurred and paid by the authority in selecting, seeking approval for, and constructing a disposal site. Money received from these fees shall be deposited in the state treasury to the credit of the fund which since the creation of the authority was the source for funds used to pay the expenses of administering these low-level radioactivity waste disposal activities.*

(b) The board by rule shall adopt and periodically revise waste disposal fees according to a schedule that is based on the *projected annual volume of low-level waste and the relative hazard presented by each type of low-level waste that is generated by the users of radioactive materials. The board by rule shall establish minimum and maximum annual fees which are to be calculated and assessed based upon the factors contained in Subsection (a) above [delivered for disposal and the relative hazard presented by each type of low-level waste that is delivered to the disposal site].*

(c) In determining relative hazard, the board shall consider the radioactive, physical, and chemical properties of each type of low-level waste.

SECTION 5.02. Section 182.021, Tax Code, is amended by adding Subdivisions (3) and (4) to read as follows:

(3) "Commission" means the United States Nuclear Regulatory Commission.

(4) "Electric utility" means any person, corporation, river authority, cooperative corporation, or any combination thereof, now or hereafter owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity.

SECTION 5.03. Section 182.022, Tax Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

*(c) A surcharge is imposed on each electric utility in the state which operates a nuclear reactor or other fixed nuclear facility licensed by the commission.*

*(d) The rate of the surcharge is five percent of the tax imposed by this section.*

*(e) This tax shall not be collected and assessed after January 1, 1997.*

SECTION 5.04. Section 182.026(a), Tax Code, is amended to read as follows:

*(a) Except as provided by Sections 182.022(c), (d), and (e), this [This] subchapter does not apply to a utility company owned and operated by a city, town, county, water improvement district, or conservation district.*

## ARTICLE 6. WETLANDS MITIGATION

### SECTION 6.01. DEFINITIONS. In this article:

(1) "Buffer zone" means a strip of land which lies immediately adjacent to a wetlands mitigation bank for the purpose of protecting the wetlands habitat and wildlife within the bank from the impacts of current or future activities occurring outside the zone and may be composed primarily of water or include fences, walls, or screens of vegetation.

(2) "Federal requirement" means the requirements of the federal government or its agencies in the form of legislation, rules, or guidelines now or hereafter required for an eligible program of mitigation banking or a wetlands regulation program.

(3) "Mitigation bank" means a parcel of land which has undergone or is proposed to undergo those physical changes necessary to create and optimize the acreage and quality of wetlands habitat on the site for the express purpose of providing mitigation credits to offset the adverse impacts to wetlands from approved projects elsewhere.

(4) "Mitigation credit" means a unit of measured area supporting wetlands habitat and wetlands habitat values not preexisting at the bank site prior to the mitigation bank development.

(5) "Mitigation project participant" means a state agency, political subdivision, or other public or private person which seeks to implement a project which would unavoidably and adversely affect wetlands and which seeks to compensate for the loss of the wetlands acreage or wetlands habitat values, or both, through participation in a mitigation bank.

(6) "Political subdivision" means any county with a population of 2.1 million or more or a county adjacent to that county.

(7) "Wetlands" means land that:

(A) has a predominance of hydric soils;

(B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) under normal circumstances does support a prevalence of such vegetation.

(8) "Wetlands regulation program" means a program of the state, an agency thereof, or a political subdivision pursuant to which it administers its own individual and general permit program regulating the use of wetlands.

SECTION 6.02. (a) Any state agency and all political subdivisions, with the approval of the General Land Office, are hereby authorized to take all necessary and reasonable actions to comply with federal requirements for the establishment and maintenance of a mitigation bank, including but not limited to:

(1) authorizing and engaging in continuing studies of wetlands areas and wetlands mitigation programs;

(2) engaging in wetlands mitigation programs and adopting and enforcing permanent land use and control measures on land owned by it in a mitigation bank consistent with federal requirements;

(3) consulting with, giving information to, and entering into agreements with federal agencies for the purposes of identifying and publishing information with respect to wetlands areas and cooperating with the federal and state agencies in connection with

studies and investigations with respect to the adequacy of local measures with respect to federal or state wetlands programs;

(4) taking steps to improve the long-range management and use of wetlands and wetlands mitigation banks;

(5) purchasing, leasing, condemning, or otherwise acquiring property inside or outside of the political subdivision necessary for a wetlands mitigation bank or buffer zone and taking all necessary action with respect to the improvement of the land and other property as a wetlands mitigation bank along with any adjacent buffer zone so that it will comply with the federal requirements. The power of eminent domain granted herein, however, shall not enable any state agency or political subdivision to acquire by condemnation any land or an interest in land owned or used by a public utility, as defined in the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes);

(6) requesting and receiving aid from the federal and state agencies and political subdivisions;

(7) purchasing or contracting for or selling or contracting to sell mitigation credits in a mitigation bank;

(8) incurring liabilities and borrowing money on terms and conditions approved by the governing body of the political subdivision;

(9) acquiring by grant, purchase, gift, devise, lease, or otherwise and holding, using, selling, leasing, or disposing of real and personal property and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any powers pursuant to this article;

(10) contracting for the use or operation of the mitigation banks or any part thereof by any operator; and

(11) procuring and paying premiums to insurers for insurance of any type in amounts considered necessary or advisable by the governing body of the political subdivision.

(b) A mitigation bank may include provisions for parks, recreation, scenic areas, and flood control.

**SECTION 6.03.** (a) Mitigation project participants who are political subdivisions are hereby authorized to issue bonds, notes, or other obligations for the purposes of acquiring land and acquiring, constructing, improving, operating, and maintaining a wetlands mitigation bank in one or more series payable from and secured by taxes, assessments, impact fees, revenues, grants, gifts, contracts, leases, or any combination of those funds.

(b) The bonds are negotiable instruments within the meaning and for purposes of the Business & Commerce Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, shall be executed, may be made redeemable before maturity, may be issued in the form, denominations, and manner and under the terms, conditions, and details, may be sold in the manner, at the price, and under the terms, and shall bear interest at the rates determined and provided in the order or resolution authorizing the issuance of the bonds. Bonds may bear interest and may be issued in accordance with Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), the Bond Procedure Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(c) If provided by the bond order or resolution, the proceeds from the sale of the bonds may be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds, to administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, and to create any other funds.

(d) Bonds may be additionally secured by a mortgage or deed of trust on real property relating to the mitigation bank authorized under this article and by chattel mortgages, liens, or security interests on personal property appurtenant to that real property. The



mitigation project participant may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrance to evidence the indebtedness.

(e) The mitigation project participant may pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source.

**SECTION 6.04.** A state agency or political subdivision may enter into a contract with another state agency or political subdivision for the purposes of jointly paying all or part of the costs of the acquisition, design, construction, improvement, or maintenance of a wetlands mitigation bank, including any buffer zone. If a contract provides for payment over a term of years, a political subdivision may levy taxes in an amount necessary to create a sinking fund for the payments required for the contract and to make the payments when due. The cost of a project or payments required to be made under a contract may be made out of bonds proceeds, taxes, or any other funds available for that purpose. Any political subdivision may issue bonds for the purposes of paying all or part of the cost of a wetlands mitigation project. State agencies and political subdivisions are authorized to use any funds to accomplish the purposes of this article.

**SECTION 6.05.** The governor is authorized to submit an application to the appropriate federal agencies on behalf of any political subdivision who proposes to administer its own individual and general wetlands regulation program for the approval of the program.

**SECTION 6.06.** (a) No political subdivision may institute a wetlands regulation program unless the commissioners court or courts of the county in which the political subdivision lies grants its consent and approval thereto after conducting a public hearing on the subject.

(b) Each political subdivision authorized to operate a wetlands regulation program is hereby authorized to establish standards by rule that shall govern delineation of lands as wetlands for purposes of this article and the purposes of federal requirements. Such rules may be established after consultation with federal agencies, including the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers, and the Soil Conservation Service of the United States Department of Agriculture. The standards for delineation of wetlands shall comply with the requirements for delineation of wetlands under federal requirements.

(c) Political subdivisions authorized to implement a wetlands mitigation program are authorized to:

(1) issue permits which:

(A) apply and assure compliance with any applicable requirements of this article or federal requirement; and

(B) can be terminated or modified for cause, including:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity;

(2) adopt and compile reasonable rules and regulations which are reasonably necessary; and

(3) comply with any program established by the federal government with respect to the implementation of a wetlands regulations program or for the acquisition, ownership, and operation of a wetlands mitigation bank.

**SECTION 6.07.** If any state agency, political subdivision, or nonprofit corporation, in the exercise of the power of relocation or any other power under this article, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of or altering the construction of any highway, railroad, electric transmission or distribution line, telephone or telegraph properties and facilities, or pipeline, the necessary relocations, raising, lowering, rerouting, changing of grade, or alteration of construction must be

accomplished at the sole expense of the state agency, political subdivision, or nonprofit corporation.

#### ARTICLE 7. BEACH CLEANUP FUNDS

SECTION 7.01. Section 61.067, Natural Resources Code, as amended by H.B. No. 1135, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subsections (c), (d), and (e) to read as follows:

*(c) The land office shall expand the Adopt-A-Beach program to the greatest extent feasible to enhance the performance of its duties under this subchapter.*

*(d) The land office may use any cash, gifts, grants, donations, or in-kind contributions that it receives from a public or private entity through the administration of the Adopt-A-Beach program to assist a municipality, a county, or the department in performing any duty imposed on the city, county, or department by this subchapter.*

*(e) The land office may adopt rules reasonably necessary to perform its duties under this subchapter.*

SECTION 7.02. Subsection (a), Section 352.002, Tax Code, as amended by H.B. No. 1414 and S.B. No. 992, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The commissioners courts of the following counties by the adoption of an order or resolution may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping:

(1) a county that has a population of more than two million;

(2) a county that has a population of 90,000 or more, borders ~~on~~ the Republic of Mexico, and does not have three or more cities that each have a population of more than 17,500;

(3) a county in which there is no municipality;

(4) a county in which there is located an Indian reservation under the jurisdiction of the United States government;

(5) a county that has a population of 17,500 or less in which there is located a horse racing track licensed as a class 1 or class 2 racetrack under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); ~~and~~

*(6) a county that borders the Gulf of Mexico; and*

(7) a county that has a population of less than 5,000, that borders ~~on~~ the Republic of Mexico, and in which there is located a major observatory.

SECTION 7.03. Subsection (d), Section 352.002, Tax Code, is amended to read as follows:

(d) The tax imposed by a county authorized by Subsection (a)(4) *or* (6) to impose the tax does not apply to a hotel located in a municipality that imposes a tax under Chapter 351 applicable to the hotel.

SECTION 7.04. Subsection (a), Section 352.1031, Tax Code, is amended to read as follows:

(a) *Except as otherwise explicitly provided, revenue* ~~[Revenue]~~ derived from the tax authorized by this chapter may be used only for the purposes stated in Section 351.101.

SECTION 7.05. Subchapter B, Chapter 352, Tax Code, is amended by adding Section 352.1033 to read as follows:

**Sec. 352.1033. USE OF REVENUE; COUNTIES BORDERING THE GULF OF MEXICO.** (a) *The revenue from a tax imposed under this chapter by a county that borders the Gulf of Mexico authorized to impose the tax by Section 352.002(a)(6) may be used only to:*

*(1) clean public beaches;*

*(2) acquire, furnish, or maintain facilities, including parks, that enhance public access to beaches;*

*(3) provide and maintain public restrooms on or adjacent to beaches or beach access facilities; and*

*(4) provide and maintain litter containers on or adjacent to beaches or beach access facilities.*

#### ARTICLE 8. PROHIBITED ACTIONS; ENFORCEMENT

SECTION 8.01. Section 361.003, Health and Safety Code, as amended by Article 1 of this Act, is amended by adding Subdivision (44) to read as follows:

*(44) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose.*

SECTION 8.02. Section 361.011, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) In matters under the department's jurisdiction, the department shall consult with:

(1) the commission concerning water pollution control and water quality aspects; ~~[and]~~

(2) the Texas Air Control Board concerning air pollution control and ambient air quality aspects; *and*

*(3) the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the agency's discretion, for the disposition of enforcement matters under this chapter.*

*(f) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.*

SECTION 8.03. Section 361.017, Health and Safety Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) In matters under the commission's jurisdiction, the commission shall consult with:

(1) the department concerning the public health aspects; ~~[and]~~

(2) the Texas Air Control Board concerning the air pollution control and ambient air quality aspects; *and*

*(3) the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the agency's discretion, for the disposition of enforcement matters under this chapter.*

*(e) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.*

SECTION 8.04. Section 361.221, Health and Safety Code, is amended to read as follows:

Sec. 361.221. **OFFENSES AND CRIMINAL PENALTIES.** (a) A person commits an offense if the person, *acting intentionally or knowingly with respect to the person's conduct:*

(1) transports, or causes or permits to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have *all required permits* ~~[a permit as required by the commission exercising jurisdiction under this chapter];~~

(2) stores, processes, *exports*, or disposes of, or causes to be stored, processed, *exported*, or disposed of, any hazardous waste without *all permits* [~~a permit as~~] required by the *appropriate regulatory agency* [~~commission exercising jurisdiction under this chapter~~] or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, *plan*, or other document filed, maintained, or used to comply with any requirement of this chapter applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the *rules of the appropriate regulatory agency* adopted [~~by the commission~~] under this chapter; or

(5) transports without a manifest, or causes *or permits* to be transported without a manifest, any hazardous waste required by rules adopted [~~by the commission~~] under this chapter to be accompanied by a manifest.

(b) *An individual* [~~Except as provided by Subsection (c), a person~~] who commits an offense under this section shall be subject on conviction to:

(1) a fine of not less than \$100 or more than \$50,000 for each act of violation and each day of violation;

(2) imprisonment not to exceed five years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed two years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(c) *A person other than an individual that commits an offense under this section shall be subject on conviction to a fine of not less than \$1,000 or more than \$250,000.*

(d) If it is shown on the trial of *an individual* [~~the defendant~~] that the *individual* [~~defendant~~] has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$200 or more than \$100,000 for each day of violation;

(2) imprisonment not to exceed 10 years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed four years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(e) *If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than \$2,000 or more than \$500,000.*

(f) [~~(d)~~] Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

(g) *A fine recovered through a prosecution brought under this section shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case* [~~(e) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause~~].

(h) [~~(f)~~] In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

SECTION 8.05. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.2215 to read as follows:

*Sec. 361.2215. CRIMINAL OFFENSES AND PENALTIES. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:*

*(1) tampers with, modifies, disables, or fails to use required pollution control or monitoring devices, systems, methods, or practices, unless done in strict compliance with this chapter or with a valid and currently effective order, rule, or permit of the appropriate regulatory agency;*

*(2) releases, causes, or permits the release of a hazardous waste that causes or threatens to cause pollution, unless the release is made in strict compliance with all required permits or a valid and currently effective order, rule, or permit of the appropriate regulatory agency; or*

*(3) fails to notify or report to the appropriate regulatory agency as required by this chapter or by a valid and currently effective order, rule, or permit of the appropriate regulatory agency.*

*(b) An individual who commits an offense under this section shall be subject on conviction to:*

*(1) a fine of not less than \$500 or more than \$100,000 for each act of violation and each day of violation;*

*(2) confinement in jail not to exceed one year; or*

*(3) both fine and confinement.*

*(c) A person other than an individual that commits an offense under this section shall be subject on conviction to a fine of not less than \$1,000 or more than \$250,000 for each act of violation and each day of violation.*

*(d) If it is shown on the trial of the defendant that the defendant has previously been convicted of the same offense under this section, the maximum punishment is doubled with respect to both the fine and imprisonment.*

*(e) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in any county to which or through which the hazardous waste was transported.*

*(f) A fine recovered through a prosecution brought under this section shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.*

SECTION 8.06. Section 361.222, Health and Safety Code, is amended to read as follows:

*Sec. 361.222. ~~[KNOWING] ENDANGERMENT OFFENSES; CRIMINAL PENALTY~~. (a) A person commits an offense if, *acting intentionally or knowingly*, the person ~~[knowingly]~~ transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of this chapter and *thereby knowingly places any other* ~~[the person knows at the time that the person by the person's conduct places another]~~ person in imminent danger of death or serious bodily injury.*

*(b) An offense under Subsection (a) is punishable for an individual by [who commits an offense under this section shall be subject on conviction to]:*

*(1) a fine of not less than \$2,500 or more than \$250,000;*

*(2) imprisonment for not more than 15 years; or*

*(3) both fine and imprisonment.*

*(c) A person, other than an individual, that commits an offense under this section shall be subject on conviction to a fine of not less than \$5,000 or more than \$1 million.*

*(d) If an offense committed by an individual under Subsection (a) results in death or serious bodily injury to any person, the individual may be punished by:*

- (1) a fine of not less than \$5,000 or more than \$500,000;*
- (2) imprisonment for not less than two years or more than 30 years; or*
- (3) both fine and imprisonment.*

*(e) If an offense committed by a person other than an individual under Subsection (a) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$10,000 or more than \$1,500,000.*

*(f) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.*

*(g) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of this chapter, thereby placing any other person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.*

*(h) An offense under Subsection (g) is punishable for an individual by:*

- (1) a fine of not less than \$1,500 or more than \$150,000;*
- (2) imprisonment for not more than five years; or*
- (3) both fine and imprisonment.*

*(i) An offense under Subsection (g) is punishable for a person other than an individual by a fine of not less than \$3,000 or more than \$300,000.*

*(j) If an offense committed under Subsection (g) results in death or serious bodily injury to any person, an individual may be punished by:*

- (1) a fine of not less than \$3,000 or more than \$300,000;*
- (2) imprisonment for not less than two years or more than 10 years; or*
- (3) both fine and imprisonment.*

*(k) If an offense committed by a person other than an individual under Subsection (g) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$6,000 or more than \$600,000.*

*(l) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, releases, causes, or permits the release of a hazardous waste into the environment, thereby placing any other person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.*

*(m) An offense under Subsection (l) is punishable for an individual by:*

- (1) a fine of not less than \$1,500 or more than \$150,000;*
- (2) imprisonment for not more than five years; or*
- (3) both fine and imprisonment.*

*(n) An offense under Subsection (l) is punishable for a person other than an individual by a fine of not less than \$3,000 or more than \$300,000.*

*(o) If an offense committed by an individual under Subsection (l) results in death or serious bodily injury to any person, the individual may be punished by:*

- (1) a fine of not less than \$3,000 or more than \$300,000;*

(2) imprisonment for not less than two years or more than 10 years; or

(3) both fine and imprisonment.

(p) If an offense committed by a person other than an individual under Subsection (l) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$6,000 or more than \$600,000.

(q) A person commits an offense if the person, acting recklessly with respect to the person's conduct, releases, causes, or permits the release of a hazardous waste into the environment, thereby placing any other person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(r) An offense under Subsection (q) is punishable for an individual by:

(1) a fine of not less than \$1,000 or more than \$100,000;

(2) confinement in jail not to exceed one year; or

(3) both fine and confinement.

(s) An offense under Subsection (q) is punishable for a person other than an individual by a fine of not less than \$2,500 or more than \$250,000.

(t) If an offense committed by an individual under Subsection (q) results in death or serious bodily injury to any person, the individual may be punished by:

(1) a fine of not less than \$2,000 or more than \$200,000;

(2) confinement for not less than one year or more than two years; or

(3) both fine and confinement.

(u) If an offense committed by a person other than an individual under Subsection (q) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$5,000 or more than \$500,000.

(v) It is an affirmative defense to prosecution under this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of the person's occupation, business, or profession or a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent.

~~(w) [(d) It is an affirmative defense to a prosecution under this section that the person endangered consented to the conduct charged and that the danger and conduct charged were reasonably foreseeable hazards of:~~

~~[(1) an occupation, business, or profession; or~~

~~[(2) medical treatment or medical or scientific experimentation conducted by professionally approved methods if the endangered person had been made aware of the risks involved before giving consent.~~

~~[(e)]~~ Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

~~(x)~~ A fine recovered through a prosecution brought under this section shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

~~(y) [(f) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause.~~

~~[(g)]~~ In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

SECTION 8.07. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.2225 to read as follows:

*Sec. 361.2225. FAILURE TO PAY FEES; CRIMINAL PENALTIES. (a) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by this chapter or by a valid and currently effective order, rule, or permit of the appropriate regulatory agency.*

*(b) An offense under this section is punishable by:*

*(1) a fine of up to twice the amount of the required fee, confinement in jail not to exceed 90 days, or both fine and confinement, for an individual; and*

*(2) a fine of up to twice the amount of the required fee for a person other than an individual.*

SECTION 8.08. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.2226 to read as follows:

*Sec. 361.2226. AFFIRMATIVE DEFENSE. It is an affirmative defense to prosecution under Sections 361.221, 361.2215, 361.222, and 361.2225 that the person charged was an employee who was carrying out the person's normal activities and was acting under orders from the person's employer, unless the person charged engaged in knowing and wilful violations.*

SECTION 8.09. Section 361.224, Health and Safety Code, is amended by adding Subsections (c)–(e) to read as follows:

*(c) The commissioner or the executive director shall refer matters to the attorney general's office for enforcement through civil suit if a person:*

*(1) is alleged to be operating a new facility without a permit in violation of state law; or*

*(2) has been the subject of two or more finally issued administrative penalty orders under this chapter for violations occurring at the same facility within two years immediately before the first alleged violation currently under investigation at that facility.*

*(d) Violations that were reported by the violator or violations consisting of errors in recordkeeping or in self-reporting submissions may not be considered in determining whether Subsection (c) applies.*

*(e) Even though the criteria of Subsection (c) are met, the attorney general's office and the executive director may agree to resolve any of the alleged violations, before or after referral, by administrative order issued by the appropriate regulatory agency with the approval of the attorney general.*

SECTION 8.10. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.231 to read as follows:

*Sec. 361.231. NOTICE OF CRIMINAL CONVICTION. (a) In addition to a sentence that may be imposed under this chapter, a person other than an individual that has been convicted of an offense under this chapter may be ordered by the court to give notice of the conviction to any person the court considers appropriate.*

*(b) On conviction under this chapter, the clerk of the court in which the conviction is returned shall forward a copy of the judgment to the regulatory agency.*

SECTION 8.11. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.232 to read as follows:

*Sec. 361.232. CRIMINAL FINE TREATED AS JUDGMENT IN CIVIL ACTION. A fine imposed by a court under this chapter against a person other than an individual shall be entered by the clerk of the court as a judgment against the person. A fine so entered has the same force and effect and may be enforced in the same manner as a judgment entered in a civil action.*

SECTION 8.12. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.233 to read as follows:



*Sec. 361.233. EFFECT ON CERTAIN OTHER LAWS. Conduct punishable as an offense under this chapter that is also punishable under another law may be prosecuted under either this chapter or the other law.*

SECTION 8.13. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.234 to read as follows:

*Sec. 361.234. DEFENSE EXCLUDED. It is not a defense to prosecution under this chapter that the actor did not know or was not aware of a rule, order, or statute.*

SECTION 8.14. Subchapter G, Chapter 361, Health and Safety Code, is amended by adding Section 361.235 to read as follows:

*Sec. 361.235. TESTIMONIAL IMMUNITY. A party to a criminal offense under this chapter may be required to furnish evidence or testify about the offense. Evidence or testimony required to be furnished under this chapter or information directly or indirectly derived from that evidence or testimony may not be used against the witness in a criminal case, except a prosecution for aggravated perjury or contempt.*

SECTION 8.15. Section 361.251(a), Health and Safety Code, is amended to read as follows:

(a) The department may assess a civil penalty against a person as provided by this section if:

(1) the person violates:

(A) ~~[(1)]~~ a provision of this chapter that is under the department's jurisdiction;

(B) ~~or~~

~~[(2)]~~ a rule adopted by the board of health; or

(C) an order, license, or permit issued by the department under this chapter; and

(2) no county, political subdivision, or municipality has instituted a lawsuit and is diligently prosecuting that lawsuit under Section 361.225 or 361.226 against the same person for the same violation.

SECTION 8.16. Section 361.252(a), Health and Safety Code, is amended to read as follows:

(a) The commission may assess a civil penalty against a person as provided by this section if:

(1) the person violates:

(A) ~~[(1)]~~ a provision of this chapter concerning solid waste that is under the commission's jurisdiction;

(B) ~~[(2)]~~ a rule or order adopted by the commission concerning solid waste that is under the commission's jurisdiction; or

(C) ~~[(3)]~~ a solid waste permit or registration issued by the commission under this chapter; and

(2) no county, political subdivision, or municipality has instituted a lawsuit and is diligently prosecuting that lawsuit under Section 361.225 or 361.226 against the same person for the same violation.

SECTION 8.161. Subchapter B, Chapter 365, Health and Safety Code, is amended to read as follows:

#### SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. DEFINITIONS. In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted by the Texas Water Commission or the Texas Department of Health;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

(4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

(6) "Litter" means:

(A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or

(B) nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

Sec. 365.012. DISPOSAL OF LITTER; CRIMINAL PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(b) A person commits an offense if the person receives litter for disposal at a place that is not an approved solid waste site, regardless of whether the litter or the land on which the litter is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under this section is a Class C misdemeanor if the litter to which the offense applies weighs 15 pounds or less or has a volume of 13 gallons or less.

(e) An offense under this section is a Class B misdemeanor if the litter to which the offense applies weighs more than 15 pounds but less than 500 pounds or has a volume of more than 13 gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter to which the offense applies weighs 500 pounds or more or has a volume of 100 cubic feet or more; or

(2) the litter is disposed for a commercial purpose and weighs more than five pounds or has a volume of more than 13 gallons.

(g) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

**Sec. 365.013. RULES AND STANDARDS; CRIMINAL PENALTY.** (a) The Texas Board of Health shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

**Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS.** (a) This subchapter does not apply to farmers:

- (1) in handling anything necessary to grow, handle, and care for livestock; or
- (2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

- (1) the storage, processing, or disposal took place on land owned or leased by the defendant;
- (2) the defendant received the litter from another person;
- (3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter was involved; and
- (4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

**Sec. 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS.** (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

**Sec. 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY.** (a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree. [~~"Dispose" means to discharge, deposit, inject, dump, spill, leak, or place junk, garbage, rubbish, refuse, or other solid waste on or into land or water.~~

~~[(2) "Garbage" means all decayable wastes from public and private establishments and restaurants, including vegetable, animal, and fish offal and animal and fish carcasses, but not including sewage, body wastes, or industrial by products.~~

~~[(3) "Junk" means all worn-out, worthless, and discarded material, including odds and ends, old iron or other metal, glass, and cordage.~~

~~[(4) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses, but not including sewage from a public or private establishment or residence.~~

~~[(5) "Rubbish" means all nondecayable wastes, except ashes, from a public or private establishment or residence.~~

~~[Sec. 365.012. DISPOSING OF SOLID WASTE; CRIMINAL PENALTY; INJUNCTION. (a) A person commits an offense if the person disposes of junk, garbage, rubbish, refuse, or other solid waste on a public highway, right of way, other public or private property, or into inland or coastal waters of this state.~~

~~[(b) A person commits an offense if the person allows or permits another person to dispose of junk, garbage, rubbish, refuse, or other solid waste on the person's property.~~

~~[(c) It is a defense to prosecution under this section that the disposal occurred:~~

~~[(1) at a solid waste site permitted by the Texas Water Commission or the Texas Department of Health;~~

~~[(2) at a solid waste site licensed by a county under Chapter 361 (Solid Waste Disposal Act); or~~

~~[(3) in a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.~~

~~[(d) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.~~

~~[(e) A county or district attorney may bring suit for an injunction to prevent or restrain a violation under this section. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.~~

~~[Sec. 365.013. DUMPING REFUSE ON OR NEAR HIGHWAY; CRIMINAL PENALTY; INJUNCTION. (a) In this section, "public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:~~

~~[(1) is opened to the public for vehicular traffic;~~

~~[(2) is used as a public recreational area; or~~

~~[(3) is under the state's legislative jurisdiction through its police power.~~

~~[(b) An individual, firm, private corporation, or municipality commits an offense if that entity dumps, deposits, or leaves refuse, garbage, rubbish, or junk on a public highway in this state.~~

~~[(c) An individual, firm, private corporation, or municipality commits an offense if that entity dumps, deposits, or leaves refuse, garbage, rubbish, or junk within 300 yards of a public highway, regardless of whether the refuse, garbage, rubbish, or junk or the land on which it is dumped, deposited, or left belongs to the offender.~~

~~[(d) This section does not apply to farmers:~~

~~[(1) in handling anything necessary to grow, handle, and care for livestock; or~~

~~[(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products.~~

~~[(e) The Texas Department of Health shall adopt rules and standards regulating the processing and treating of refuse, garbage, rubbish, or junk dumped, deposited, or left within 300 yards of a public highway. Subsection (c) does not apply if the refuse, garbage, rubbish, or junk is processed and treated in accordance with those rules and standards. A person commits an offense if the person violates a rule adopted under this subsection.~~

~~[(f) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.]~~

~~[(g) A county or district attorney may bring suit for an injunction to prevent or restrain a violation of this section. A person affected or to be affected by a violation is entitled to enjoin the violation.]~~

~~[Sec. 365.014. THROWING INJURIOUS SUBSTANCE ON HIGHWAY; CRIMINAL PENALTY. (a) A person commits an offense if the person throws or deposits on a highway a glass bottle, glass, a nail, a tack, wire, a can, or any other substance likely to injure a person, animal, or vehicle on the highway.]~~

~~[(b) A person who commits an offense under this section is, on conviction, subject to the penalties and procedures provided by Sections 143 through 153, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).]~~

~~[Sec. 365.015. LIABILITY OF OPERATOR OF BOAT OR MOTOR VEHICLE; CRIMINAL PENALTY. (a) In this section:~~

~~[(1) "Litter" means refuse or junk.]~~

~~[(2) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).]~~

~~[(3) "Public highway" has the meaning assigned by Section 365.013.]~~

~~[(b) A person operating a boat or motor vehicle commits an offense if litter is thrown or discharged from the boat or motor vehicle into the state's inland or coastal waters or onto a public highway.]~~

~~[(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.]~~

~~[Sec. 365.016. ILLEGAL DUMPING FROM VEHICLE; CRIMINAL PENALTY. (a) A person commits an offense if the person uses a motor vehicle to dispose of trash, refuse, waste, litter, or any other material in violation of a law or ordinance of the state or a political subdivision of the state.]~~

~~[(b) It is an exception to the application of this section that the person has a valid license with or contract from the state or a political subdivision of the state to dispose of the material in the manner and at the place in which it was disposed.]~~

~~[(c) An offense under this section is punishable by a fine of not more than \$2,000, unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.]~~

~~[Sec. 365.017. DISPOSING OF REFUSE IN CAVES; CRIMINAL PENALTY. (a) A person commits an offense if, without prior permission of the owner, the person stores, dumps, disposes of, or otherwise places in a cave a chemical or a dead animal or sewage, junk, garbage, rubbish, or other refuse.]~~

~~[(b) An offense under this section is a Class C misdemeanor unless:~~

~~[(1) it is shown on the trial of the defendant that the defendant has previously been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or]~~

~~[(2) it is shown on the trial of the defendant that the defendant has previously been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.]~~

SECTION 8.162. Section 365.034, Health and Safety Code, as added by Chapter 14, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 365.034. COUNTY REGULATION OF LITTER [JUNK OR REFUSE] NEAR PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of a county may:

- (1) by order prohibit the accumulation of *litter* for more than 30 days ~~[of refuse or junk]~~ on a person's property within 50 feet of a public highway in the county;
- (2) provide for the removal and disposition of *litter* ~~[refuse or junk]~~ accumulated near a public highway in violation of an order adopted under this section; and
- (3) provide for the assessment against a person who owns the property from which *litter* ~~[refuse or junk]~~ is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the *litter* ~~[refuse or junk]~~.
- (b) Before the commissioners court takes any action to remove or dispose of *litter* ~~[junk or refuse]~~ under this section, the court shall send a notice by certified mail to the record owners of the property on which the *litter* ~~[junk or refuse]~~ is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the *litter* ~~[refuse or junk]~~ or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.
- (c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:
  - (1) a lien in favor of the county attaches to the property from which the *litter* ~~[refuse or junk]~~ was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and
  - (2) the commissioners court shall file a record of the lien in the office of the county clerk.
- (d) The violation of an order adopted under this section is a Class C misdemeanor.
- (e) In this section:
  - (1) "*Litter*" has the meaning ~~["Junk" and "refuse" have the meanings]~~ assigned by Section 365.011 except that *the term does* ~~[these terms do]~~ not include equipment used for agricultural purposes.
  - (2) "Public highway" has the meaning assigned by Section 365.011 ~~[365.013]~~.

SECTION 8.17. Section 382.082, Health and Safety Code, is amended to read as follows:

Sec. 382.082. ENFORCEMENT BY SUIT; NOTICE AND ORDERS. (a) If the executive director finds that a person has violated, is violating, or is threatening to violate any provision of this chapter or of any board rule or order, the executive director shall within five days notify that person of the apparent violation. *Failure of the executive director to issue notice does not relieve a person of liability under this chapter.*

(b) The board or the executive director may cause a suit to be instituted in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation; or
- (2) the assessment and recovery of a civil penalty as provided by Section 382.085(c); or
- (3) both injunctive relief and civil penalty.

(c) Notwithstanding Subsection (b), if the apparent violation or threat of violation of a nonclerical requirement continues later than the 30th day after the date on which notice is received under Subsection (a), the executive director shall institute proceedings under Section 382.023(b) to issue an appropriate order providing for compliance within 180 days of the notice of the violation.

(d) Under Subsection (c) if the board determines that good faith efforts to correct the violation have been made, the board may adopt an order under Section 382.023(b) providing for compliance later than the 180th day after issuance of the notice under Subsection (a). It is intended that "good faith effort" be strictly interpreted by the board while giving due consideration to economic reasonableness and technical practicability.

(e) Notwithstanding Subsection (b) *and except as provided by Subsection (f)*, if a violation of an order issued under Subsection (c) continues later than the 180th day after

the date on which the original notice of violation is received, the board or executive director shall:

- (1) institute a suit, as provided by Subsection (b) for civil penalties and appropriate injunctive relief;
- (2) begin an action under Section 382.059 to revoke a permit or exemption;
- (3) begin an action for administrative penalties under Section 382.088; or
- (4) pursue a ~~any~~ combination of the remedies under this subsection.

(f) *The board or executive director shall cause a suit to be instituted as provided by Subsection (b) if a person:*

*(1) is alleged to be constructing or operating a facility at a new plant site without a permit in violation of state law; or*

*(2) has been the subject of two or more finally issued administrative penalty orders under this chapter for violations occurring at the same plant site within two years immediately before the first alleged violation currently under investigation at that site.*

*(g) Violations that were reported by the violator or violations consisting of errors in recordkeeping or in self-reporting submissions may not be considered in determining whether Subsection (f) applies.*

*(h) Even though the criteria of Subsection (f) are met, the attorney general's office and the executive director may agree to resolve any of the alleged violations, before or after referral, by administrative order issued by the appropriate regulatory agency with the approval of the attorney general.*

*(i) At the request of the board or the executive director, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, recovery of the civil penalty, or both.*

*(j) The board shall consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Subsection (f) or whether referral is appropriate for the disposition of enforcement matters under this chapter. If referral is determined to be mandatory or appropriate, the board shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The board shall use all available enforcement options.*

SECTION 8.18. Section 382.088(a), Health and Safety Code, is amended to read as follows:

(a) A person may be assessed a civil penalty as provided by this section if the person violates this chapter or a rule or order adopted or permit issued under this chapter *and no local government has instituted a lawsuit and is diligently prosecuting that lawsuit against the same person for the same violation under Section 382.114.*

SECTION 8.19. Section 26.123, Water Code (effective until delegation of NPDES permit authority), is amended by adding Subsections (e)–(h) to read as follows:

*(e) The commission, through the executive director, shall refer matters to the attorney general's office for enforcement through civil suit if a person:*

*(1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the water in the state at a new point of discharge without a permit in violation of state law; or*

*(2) has been the subject of two or more finally issued administrative penalty orders under this chapter for violations occurring at the same wastewater management system or other point of discharge within two years before the first alleged violation currently under investigation at that plant site.*

*(f) Violations that were reported by the violator or violations consisting of errors in recordkeeping or in self-reporting submissions may not be considered in determining whether Subsection (e) applies.*

*(g) Even though the criteria of Subsection (e) are met, the attorney general's office and the executive director may agree to resolve any of the alleged violations, before or after referral, by administrative order issued by the appropriate regulatory agency after approval by the attorney general.*

*(h) The commission shall consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under this section or whether referral is appropriate for the disposition of enforcement matters under this chapter. If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The commission shall use all available enforcement options.*

SECTION 8.20. Section 26.123, Water Code (effective on delegation of NPDES permit authority), is amended by adding Subsections (f)–(i) to read as follows:

*(f) The commission, through the executive director, shall refer matters to the attorney general's office for enforcement through civil suit if a person:*

*(1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law; or*

*(2) has been the subject of two or more finally issued administrative penalty orders under this chapter for violations occurring at the same wastewater management system or other point of discharge within two years before the first alleged violation currently under investigation at that plant site.*

*(g) Violations that were reported by the violator or violations consisting of errors in recordkeeping or in self-reporting submissions may not be considered in determining whether Subsection (f) applies.*

*(h) Even though the criteria of Subsection (f) are met, the attorney general's office and the executive director may agree to resolve any of the alleged violations, before or after referral, by administrative order issued by the appropriate regulatory agency after approval by the attorney general.*

*(i) The commission shall consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under this section or whether referral is appropriate for the disposition of enforcement matters under this chapter. If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The commission shall use all available enforcement options.*

SECTION 8.21. Section 26.136(a), Water Code, is amended to read as follows:

*(a) If a person violates this chapter or a rule or order adopted or a permit issued under this chapter and no local government has instituted a lawsuit under this chapter and is diligently prosecuting that lawsuit against the same person for the same violation under Section 26.124 of this code, the commission may assess a civil penalty against that person as provided by this section.*

SECTION 8.22. (a) Sections 26.212 (effective until delegation of NPDES permit authority) and 26.212 (effective on delegation of NPDES permit authority), Water Code, are repealed.

(b) Subchapter F, Chapter 26, Water Code, is amended by adding Section 26.2121 to read as follows:

**Sec. 26.2121. CRIMINAL OFFENSES AND PENALTIES.** *(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or permits the discharge of a waste or pollutant into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.*

*(b) An offense under Subsection (a) is punishable for an individual by:*



- (1) a fine of not less than \$1,000 or more than \$25,000;
- (2) confinement in jail not to exceed one year; or
- (3) both fine and confinement.

(c) An offense under Subsection (a) is punishable for a person other than an individual by a fine of not less than \$1,000 or more than \$50,000.

(d) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or permits the discharge of a waste or pollutant from a point source in violation of this chapter or of a rule, permit, or order of the appropriate regulatory agency.

(e) An offense under Subsection (d) is punishable for an individual by:

- (1) a fine of not less than \$1,000 or more than \$25,000;
- (2) confinement in jail not to exceed one year; or
- (3) both fine and confinement.

(f) An offense under Subsection (d) is punishable for a person other than an individual by a fine of not less than \$1,000 or more than \$50,000.

(g) A person commits an offense if the person discharges or permits the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(h) An offense under Subsection (g) is punishable by a fine of not less than \$100 or more than \$10,000.

(i) An offense under Subsection (g) may be prosecuted without alleging or proving any culpable mental state.

(j) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use pollution control or monitoring devices, systems, methods, or practices required by this chapter or a rule, permit, or order of the commission or one of its predecessor agencies unless done in strict compliance with the rule, permit, or order.

(k) An offense under Subsection (j) is punishable for an individual by:

- (1) a fine of not less than \$500 or more than \$100,000;
- (2) confinement in jail not to exceed one year; or
- (3) both fine and confinement.

(l) An offense under Subsection (j) is punishable for a person other than an individual by a fine of not less than \$1,000 or more than \$250,000.

(m) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan, or other document, including monitoring device data, filed or required to be maintained by this chapter, or by a rule, permit, or order of the appropriate regulatory agency.

(n) An offense under Subsection (m) is punishable for an individual by:

- (1) a fine of not less than \$500 or more than \$100,000;
- (2) confinement in jail not to exceed one year; or
- (3) both fine and confinement.

(o) An offense under Subsection (m) is punishable for a person other than an individual by a fine of not less than \$1,000 or more than \$250,000.

(p) A person commits an offense if the person intentionally or knowingly fails to notify or report to the commission as required under this chapter or by a rule, permit, or order of the appropriate regulatory agency.

(q) An offense under Subsection (p) is punishable for an individual by:

- (1) a fine of not less than \$500 or more than \$100,000;
- (2) confinement in jail not to exceed one year; or
- (3) both fine and confinement.

(r) An offense under Subsection (p) is punishable for a person other than an individual by a fine of not less than \$1,000 or more than \$250,000.

(s) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by this chapter or by a rule, permit, or order of the appropriate regulatory agency.

(t) An offense under Subsection (s) is punishable for an individual by:

- (1) a fine not to exceed twice the amount of the required fee;
- (2) confinement in jail not to exceed 90 days; or
- (3) both fine and confinement<sup>+</sup>.

(u) An offense under Subsection (s) is punishable for a person other than an individual by a fine not to exceed twice the amount of the required fee.

(v) If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this section, the maximum punishment is doubled with respect to both the fine and confinement.

(w) Each day that a person engages in conduct proscribed by this section constitutes a separate offense.

(x) A fine recovered through a prosecution brought under this section shall be divided equally between the state and a local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

SECTION 8.23. Subchapter F, Chapter 26, Water Code, is amended by adding Section 26.2125 to read as follows:

Sec. 26.2125. **ENDANGERMENT OFFENSES.** (a) A person commits an offense if the person, acting intentionally or knowingly, discharges or permits the discharge of a waste or pollutant into or adjacent to water in the state and thereby knowingly places any other person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under Subsection (a) is punishable for an individual by:

- (1) a fine of not less than \$2,500 or more than \$250,000;
- (2) imprisonment not to exceed 10 years; or
- (3) both fine and imprisonment.

(c) An offense under Subsection (a) is punishable for a person other than an individual by a fine of not less than \$5,000 or more than \$500,000.

(d) If an offense committed by an individual under Subsection (a) results in death or serious bodily injury to any person, the individual may be punished by:

- (1) a fine of not less than \$5,000 or more than \$500,000;
- (2) imprisonment for not less than five years or more than 20 years; or
- (3) both fine and imprisonment.

(e) If an offense committed by a person other than an individual under Subsection (a) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$10,000 or more than \$1 million.

(f) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's

*actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.*

*(g) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or permits the discharge of a waste or pollutant into or adjacent to water in the state, thereby placing any other person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.*

*(h) An offense under Subsection (g) is punishable for an individual by:*

- (1) a fine of not less than \$1,500 or more than \$150,000;*
- (2) imprisonment not to exceed five years; or*
- (3) both fine and imprisonment.*

*(i) An offense under Subsection (g) is punishable for a person other than an individual by a fine of not less than \$3,000 or more than \$300,000.*

*(j) If an offense committed by an individual under Subsection (g) results in death or serious bodily injury to any person, the individual may be punished by:*

- (1) a fine of not less than \$3,000 or more than \$300,000;*
- (2) imprisonment for not less than three years or more than 10 years; or*
- (3) both fine and imprisonment.*

*(k) If an offense under Subsection (g) committed by a person other than an individual results in death or serious bodily injury to any person, the person convicted of the offense may be punished by a fine of not less than \$6,000 or more than \$600,000.*

*(l) A person commits an offense if the person, acting recklessly with respect to the person's conduct, discharges or permits the discharge of a waste or pollutant into or adjacent to water in the state, thereby placing any other person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.*

*(m) An offense under Subsection (l) is punishable for an individual by:*

- (1) a fine of not less than \$1,000 or more than \$100,000;*
- (2) confinement in jail not to exceed one year; or*
- (3) both fine and confinement.*

*(n) An offense under Subsection (l) is punishable for a person other than an individual by a fine of not less than \$2,500 or more than \$250,000.*

*(o) If an offense committed by an individual under Subsection (l) results in death or serious bodily injury to any person, the individual may be punished by:*

- (1) a fine of not less than \$2,000 or more than \$200,000;*
- (2) confinement of not less than one year or more than five years; or*
- (3) both fine and confinement.*

*(p) If an offense committed by a person other than an individual under Subsection (l) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$5,000 or more than \$500,000.*

*(q) It is an affirmative defense to prosecution under this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of the person's occupation, business, or profession or a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent.*

(r) *Each day that a person engages in conduct proscribed by this section constitutes a separate offense.*

(s) *A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.*

SECTION 8.24. Subchapter F, Chapter 26, Water Code, is amended by adding Section 26.2126 to read as follows:

*Sec. 26.2126. AFFIRMATIVE DEFENSE. It is an affirmative defense to prosecution under Sections 26.2121 and 26.2125 of this code that the person charged was an employee who was carrying out the person's normal activities and was acting under orders from the person's employer, unless the person charged engaged in knowing and wilful violations.*

SECTION 8.25. (a) Sections 26.213 (effective until delegation of NPDES permit authority) and 26.213 (effective on delegation of NPDES permit authority), Water Code, are repealed.

(b) Subchapter F, Chapter 26, Water Code, is amended by adding Section 26.2131 to read as follows:

*Sec. 26.2131. NOTICE OF CRIMINAL CONVICTION. (a) In addition to a sentence that may be imposed under this subchapter, a person other than an individual that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court considers appropriate.*

*(b) On conviction under this subchapter, the clerk of the court in which the conviction is returned shall forward a copy of the judgment to the commission.*

SECTION 8.26. (a) Sections 26.217 (effective until delegation of NPDES permit authority) and 26.217 (effective on delegation of NPDES permit authority), Water Code, are repealed.

(b) Subchapter F, Chapter 26, Water Code, is amended by adding Section 26.2171 to read as follows:

*Sec. 26.2171. VENUE. An offense under this subchapter may be prosecuted in a county in which an element of the offense was committed or a county to which or through which the discharge, waste, or pollutant was transported.*

SECTION 8.27. Section 26.223, Water Code, is amended to read as follows:

*Sec. 26.223. FINE TREATED AS JUDGMENT IN CIVIL ACTION. If a person other than an individual [private corporation] is found guilty of a violation of this subchapter and a fine imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the person [corporation], and the fine shall be of the same force and effect and be enforced against the person [corporation] in the same manner as if the judgment were recovered in a civil action.*

SECTION 8.28. Section 26.225, Water Code, is amended to read as follows:

*Sec. 26.225. EFFECT ON CERTAIN OTHER LAWS. Conduct punishable as an offense under this subchapter that is also punishable under another law may be prosecuted under either law [To the extent that any general or special law makes an act or omission a criminal offense and which act or omission also constitutes a criminal offense under this subchapter, the other general or special law is repealed, but only to that extent].*

SECTION 8.29. Subchapter F, Chapter 26, Water Code, is amended by adding Sections 26.226 and 26.227 to read as follows:

*Sec. 26.226. DEFENSE EXCLUDED. It is not a defense to prosecution under this subchapter that the person did not know or was not aware of a rule, order, or statute.*

*Sec. 26.227. TESTIMONIAL IMMUNITY. A party to an offense under this subchapter may be required to furnish evidence or testify about the offense. Evidence or*

*testimony required to be furnished under this subchapter or information directly or indirectly derived from that evidence or testimony may not be used against the witness in a criminal case, except in a prosecution for aggravated perjury or contempt.*

SECTION 8.30. (a) The changes in law made by this article apply only to a criminal offense committed on or after the effective date of this article.

(b) For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

(c) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 8.31. This article takes effect September 1, 1991, except that if this Act does not receive the necessary number of votes required by Article III, Section 39, of the Texas Constitution to become effective before the 90th day after adjournment of the 72nd Legislature, 1st Called Session, this article takes effect December 1, 1991.

#### ARTICLE 9. PUBLIC HEARING PROCEDURES

SECTION 9.01. Subchapter B, Chapter 12, Health and Safety Code, is amended by adding Section 12.016 to read as follows:

*Sec. 12.016. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a department official or employee during a public hearing conducted by the department shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.*

*(b) When a public hearing conducted by the department is required by law to be conducted at a certain location, the department shall determine the place within that location at which the hearing will be conducted. In making that determination, the department shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.*

*(c) The department shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.*

*(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the department may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the department and must again comply with notice requirements and any other requirements of law or board rule as though the application were originally submitted to the department on that date.*

*(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the department at a time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements.*

SECTION 9.02. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0291 to read as follows:

*Sec. 382.0291. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a board official or employee during a public hearing conducted by the board shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.*

*(b) When a public hearing conducted by the board is required by law to be conducted at a certain location, the board shall determine the place within that location at which the hearing will be conducted. In making that determination, the*

*board shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.*

*(c) The board shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.*

*(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the board may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the board and must again comply with notice requirements and any other requirements of law or board rule as though the application were originally submitted to the board on that date.*

*(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the board at a time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements.*

SECTION 9.03. This article applies to an application that is submitted to the Texas Department of Health or the Texas Air Control Board on or after the effective date of this article.

#### ARTICLE 10. LEGISLATIVE NATURAL RESOURCES BOARD

SECTION 10.01. The Legislative Natural Resources Board is an agency of the legislative branch of state government.

SECTION 10.02. The board is composed of:

- (1) the chair of the House Environmental Affairs Committee;
- (2) the chair of the Senate Natural Resources Committee;
- (3) the chair of the House Natural Resources Committee;
- (4) the chair of the Senate Finance Committee;
- (5) the chair of the House Government Organization Committee; and
- (6) the chair of the Senate State Affairs Committee.

SECTION 10.03. The board shall oversee and review the implementation of legislative natural resources policy by state agencies that have the statutory duty to implement that policy. The board may require information and reports from state agencies as necessary to carry out its oversight and review duties.

SECTION 10.04. The board shall continue its review and oversight activities during the transition period to the full Texas Natural Resources Conservation Commission. The board shall terminate its duties effective January 1, 1994.

SECTION 10.05. At a minimum, the board shall ensure that transition activities do not:

- (1) delay or prejudice any permit processing activities;
- (2) result in undue duplication of effort;
- (3) impede progress toward activities ensuring the delegation of federal environmental programs; and
- (4) ensure compliance with the provisions of this Act.

#### ARTICLE 11. EFFECTIVE DATES

SECTION 11.01. Except as otherwise provided by this Act, this Act takes effect September 1, 1991.

SECTION 11.02. Except as otherwise provided by this Act, if this Act does not receive the necessary number of votes required by Article III, Section 39, of the Texas Constitution to become effective before the 90th day after adjournment of the 72nd Legislature, 1st Called Session, this Act takes effect December 1, 1991.

SECTION 11.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on July 19, 1991: Yeas 28, Nays 0; the Senate concurred in House amendments on July 30, 1991: Yeas 31, Nays 0; passed the House, with amendments, on July 25, 1991: Yeas 121, Nays 15, one present not voting.

Approved August 12, 1991.

Effective September 1, 1991, except Article 1 is effective August 12, 1991.

## CHAPTER 4

### S.B. No. 3

#### AN ACT

relating to state and local government finances and the cost-effective delivery of governmental services, including the administration, management, use, payment, expenditure, transfer, receipt, and collection of certain state and local revenue, and the authority of certain state agencies to issue bonds and make certain expenditures.

*Be it enacted by the Legislature of the State of Texas:*

#### ARTICLE 1

SECTION 1.01. Subsection (a), Section 57, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of *Thirteen [Ten] Dollars (\$13) [(\$10)]*, of which the first Five Dollars (\$5) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining *Eight [Five] Dollars (\$8) [(\$5)]* shall be forwarded to the State Department of Highways and Public Transportation [~~for deposit in the State Highway Fund~~], together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector[~~, from which fees the Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein~~]. *Of the Eight Dollars (\$8) forwarded to the Department, Five Dollars (\$5) shall be deposited in the General Revenue Fund and Three Dollars (\$3) shall be deposited in the State Highway Fund to recover the expenses necessary to efficiently administer and perform the duties set forth herein.*

SECTION 1.02. (a) The change in law made by this article applies only to a fee imposed on or after the effective date of this article.

(b) This article takes effect December 1, 1991.

#### ARTICLE 2

SECTION 2.01. DEFINITIONS. In this article:

- (1) "Council" means the Interagency Energy Council.
- (2) "Participating agency" means the office of the comptroller of public accounts, the General Land Office, the Railroad Commission of Texas, or The University of Texas System.
- (3) "Plan" means the comprehensive oil and gas production reporting plan required by Section 2.03 of this article.

SECTION 2.02. INTERAGENCY ENERGY COUNCIL. (a) The Interagency Energy Council is established.